TABLE #7 - PARENTING PLANS

FACT PATTERN

Anne and Lucinda have been married for six years. They have three children, Cedric who is 8, Maria who is 6, and Thomas who is 4. Their marriage has had some ups and downs. Finances have been a problem from time to time. Anne sells life insurance and Lucinda is a bartender. They both like to drink and enjoy cannabis whenever they can afford it. Lucinda cares for the children during the days while Anne is selling life insurance. Anne cares for them evenings and nights while Lucinda works at night. Lucinda sleeps in late on Saturday and Sunday mornings following a late night bartending. The only time the parties are together is Sunday and Monday evenings when Lucinda is not working. Occasionally, Anne has evening appointments with potential customers on Mondays.

Since March of 2020 Lucinda and Anne's marriage has grown increasingly strained and contentious. Anne is not able to meet with prospective clients in person because of the virus. This has had a dramatic adverse effect on her performance and income. The club where Lucinda works was closed for an extended period leaving her without work or an income. It reopened recently to a limited capacity. Their children have been mostly at home attending school remotely.

The financial strain and sudden inability to have any alone or down time has brought out the worst in Anne and Lucinda. Lucinda tested positive for the virus several months ago. Anne is suspicious about how Lucinda contracted the virus. Both of them have been drinking heavily. Anne has caught Lucinda smoking cannabis several times. She does not have a believable explanation as to how she acquired the cannabis. Anne is concerned Lucinda is using other drugs. Lucinda is napping every day at different times and is occasionally incoherent. Anne cannot find where Lucinda may have hidden these other drugs. Lucinda denies using any drug aside from her cannabis.

Between the financial pressures, the parties frequent drinking, Lucinda's drug use, and being confined to home for months, Anne and Lucinda argue and quarrel multiple times a day. Their fighting is taking a toll on the three children who are also quarreling among themselves, experiencing difficulty sleeping, and becoming increasingly withdrawn.

Anne decides she needs to move out of the house. One night while Lucinda is bartending, Anne packs up the children and herself and moves in with her parents. She leaves a note for Lucinda telling her she needs to get help with her drug problem. Until she gets that help, Anne and the children will be staying with her parents.

Each of the parties have a consultation with an attorney. Anne's attorney recommends that she file a Petition for Divorce and an Emergency Motion asking that the court order a parenting schedule in which Lucinda can only see the children with supervision.

Lucinda's attorney advises her to immediately stop all use of controlled substances, gather any evidence of Anne's drinking and pot smoking, and consider whether she wants a divorce or reconciliation.

Anne follows her attorney's advice. After a telephonic hearing in which Lucinda appears pro se and seems to be in a fog, the Court orders she have limited time with the children which must be supervised. The Court also orders that Lucinda pay Anne child support.

Several months go by. Lucinda does get help for her drinking and drug use. Her parents provide the money for her to hire the lawyer with whom she had a consult at the beginning. They file a motion requesting the Court review the current Parenting Plan alleging she has cleaned-up her act and is ready to have considerably more time with the children without supervision. Her AA sponsor is prepared to testify as to her ability to have the children overnight without supervision. They also ask the Court to modify the child support order alleging that Anne has minimal expense while living with her parents and is capable of earning more than she has been. Lucinda and her attorney contend Anne has grown lazy and is not making an adequate effort to sell insurance.

Anne has grown lazy. She does not need to work terribly hard. Between the support she is getting from her parents, the child support she receives form Lucinda, and the small amount of income she has from selling insurance, Anne is simply not motivated to work. In addition, she has met a woman online who lives on the west coast. Anne has become very enamored with her. This paramour wants Anne to come to California and live with her. She would love to have Anne bring her children. And to ice the cake, she is part owner of an insurance agency and can arrange a good paying job for Anne.

Lucinda and her lawyer prevail in their motion to modify the Parenting Plan and the child support order. Lucinda now has the children two nights per week and alternating weekends. The child support order is vacated in its entirety, so no support is being paid.

Anne is unhappy with the new orders and decides she is moving to California. Her attorney notifies Lucinda's attorney Anne is moving to California where she has secured a new position that will pay her substantially more. In addition, her

employment is located in the same community as Lucinda's parents and siblings as well as Anne's sister and her family. Consequently, the children will have a far greater support network, an opportunity to bond with their maternal grandparents, aunt, uncle, and cousins. In addition, Anne will be able to provide a better quality of life because she will be making a lot more money. Lucinda is devastated. Her attorney tells her it will be up to the Court to decide if Anne can move to California with the children.

TITLE XLIII
DOMESTIC RELATIONS

CHAPTER 461-A
PARENTAL RIGHTS AND RESPONSIBILITIES

Section 461-A:1

461-A:1 Definitions. –
In this chapter:
I. "Decision-making responsibility" means the responsibility to make decisions for the child. It may refer to decisions on all issues or on specified issues.
II. "Mediation" means a process in which a neutral third party facilitates settlement discussions between parties.
III. "Mediator" means a family mediator, certified pursuant to RSA 328-C, who has contracted with the court to participate in court-referred mediation under this chapter.
IV. "Parental rights and responsibilities" means all rights and responsibilities parents have concerning their child.
V. "Parenting plan" means a written plan describing each parent's rights and responsibilities.
VI. "Parenting schedule" means the schedule of when the child is in the care of each parent.
VII. "Residential responsibility" means a parent's responsibility to provide a home for the child.

Source. 2005, 273:1. 2009, 21:4, eff. Jan. 1, 2010.

Section 461-A:2

461-A:2 Statement of Purpose. –
I. Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a child, to:
(a) Support frequent and continuing contact between each child and both parents.
(b) Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced.
(c) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, unless there is evidence of domestic violence, child abuse, or neglect.
(d) Grant parents and courts the widest discretion in developing a parenting plan.
(e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.
II. This chapter shall be construed so as to promote the policy stated in this section.

Source. 2005, 273:1, eff. Oct. 1, 2005.

Section 461-A:3

461-A:3 Procedure and Jurisdiction. –

I. The procedure in cases concerning parental rights and responsibilities, including child support, shall be the same as the procedure for petitions for divorce and legal separation under RSA 458. Except as otherwise provided in this chapter, the court, upon proper application and notice to the adverse party, may revise and modify any order made by it, make such new orders as may be necessary, and may award costs as justice may require.

II. In cases where husband and wife or unwed parents are living apart, the court, upon petition of either party, may make such order as to parental rights and responsibilities and support of the children as justice may require. All applicable provisions of this chapter and of RSA 458-A, 458-B, 458-C, and 458-D shall apply to such proceedings.

III. The jurisdiction granted by this section shall be limited by the Uniform Child Custody Jurisdiction and Enforcement Act, if another state has jurisdiction as provided in that act. For the purposes of interpreting that act and any other provision of law which refers to a custodial parent, including but not limited to RSA 458-A, any parent with 50 percent or more of the residential responsibility shall be considered a custodial parent.

Source. 2005, 273:1. 2009, 191:3, eff. Dec. 1, 2010.

Section 461-A:4

461-A:4 Parenting Plans; Contents. –

I. In any proceeding to establish or modify a judgment providing for parenting time with a child, except for matters filed under RSA 173-B, the parents shall develop and file with the court a parenting plan to be included in the court's decree. If the parents are unable to develop a parenting plan, the court may develop it. In developing a parenting plan under this section, the court shall consider only the best interests of the child as provided under RSA 461-A:6 and the safety of the parties.

II. A parenting plan may include provisions relative to:

(a) Decision-making responsibility and residential responsibility.

(b) Information sharing and access, including telephone and electronic access.

(c) Legal residence of a child for school attendance.

(d) Parenting schedule, including:

(1) Holiday, birthday, and vacation planning.

(2) Weekends, including holidays, and school in-service days preceding or following weekends.

(e) Transportation and exchange of the child.

(f) Relocation of parents.

(g) Procedure for review and adjustment of the plan, including the grounds for modification in RSA 461-A:11.

(h) Methods for resolving disputes.

III. If the parties are insured and the parenting plan directs the parties to participate in counseling, the court shall give due consideration to selecting a counselor who accepts direct payment from the parties' health insurance carrier.

IV. If the parents have joint decision-making responsibility under RSA 461-A:5, the parenting plan shall include the legal residence of each parent unless the court finds that there is a history of domestic abuse or stalking or that including such information would not be in the best interest of the child. If the parenting plan includes a parent's residence, the parent shall be responsible for promptly notifying the court and the other parent of any

change in residence. The failure to provide such information may result in a finding of contempt of court.
V. If the court orders supervised visitation, it may order that such visitation shall take place only at a visitation center that uses a metal detection device and has trained security personnel on-site.
VI. Each parenting plan shall include a detailed parenting schedule for the child, specifying the periods when each parent has residential responsibility or non-residential parenting time. Neither parent shall be described as having the child "reside primarily" with him or her or as having "primary residential responsibility" or "custody" or be designated as the "primary residential parent."

Source. 2005, 273:1. 2011, 106:3; 176:1. 2014, 107:3, eff. June 11, 2014. 2018, 202:1, 2, eff. Aug. 7, 2018.

Section 461-A:4-a

461-A:4-a Judicial Enforcement of Parenting Plan. – Any motion for contempt or enforcement of an order regarding an approved parenting plan under this chapter, if filed by a parent, shall be reviewed by the court within 30 days.

Source. 2006, 251:1, eff. Aug. 4, 2006.

Section 461-A:5

461-A:5 Decision-making Responsibility. –
Except as provided in paragraph III, in the making of any order relative to decision-making responsibility, there shall be a presumption, affecting the burden of proof, that joint decision-making responsibility is in the best interest of minor children:
I. Where the parents have agreed to an award of joint decision-making responsibility or so agree in open court at a hearing for the purpose of determining parental rights and responsibilities for the minor children of the marriage. If the court declines to enter an order awarding joint decision-making responsibility, the court shall state in its decision the reasons for the denial.
II. Upon the application of either parent for joint decision-making responsibility, in which case it may be awarded at the discretion of the court. For the purpose of assisting the court in making a determination whether an award of joint decision-making responsibility is appropriate under this section, the court may appoint a guardian ad litem to represent the interests of the children according to the provisions of RSA 461-A:16. If the court declines to enter an order awarding joint decision-making responsibility, the court shall state in its decision the reasons for the denial.
III. Where the court finds that abuse as defined in RSA 173-B:1, I has occurred, the court shall consider such abuse as harmful to children and as evidence in determining whether joint decision-making responsibility is appropriate. In such cases, the court shall make orders for the allocation of parental rights and responsibilities that best protect the children or the abused spouse or both. If joint decision-making responsibility is granted despite evidence of abuse, the court shall provide written findings to support the order.

Source. 2005, 273:1, eff. Oct. 1, 2005.

Section 461-A:6

461-A:6 Determination of Parental Rights and Responsibilities; Best Interest. –
I. In determining parental rights and responsibilities, the court shall be guided by the best interests of the child, and shall consider the following factors:

(a) The relationship of the child with each parent and the ability of each parent to provide the child with nurture, love, affection, and guidance.
(b) The ability of each parent to assure that the child receives adequate food, clothing, shelter, medical care, and a safe environment.
(c) The child's developmental needs and the ability of each parent to meet them, both in the present and in the future.
(d) The quality of the child's adjustment to the child's school and community and the potential effect of any change.
(e) The ability and disposition of each parent to foster a positive relationship and frequent and continuing physical, written, and telephonic contact with the other parent, including whether contact is likely to result in harm to the child or to a parent.
(f) The support of each parent for the child's contact with the other parent as shown by allowing and promoting such contact, including whether contact is likely to result in harm to the child or to a parent.
(g) The support of each parent for the child's relationship with the other parent, including whether contact is likely to result in harm to the child or to a parent.
(h) The relationship of the child with any other person who may significantly affect the child.
(i) The ability of the parents to communicate, cooperate with each other, and make joint decisions concerning the children, including whether contact is likely to result in harm to the child or to a parent.
(j) Any evidence of abuse, as defined in RSA 173-B:1, I or RSA 169-C:3, II, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.
(k) If a parent is incarcerated, the reason for and the length of the incarceration, and any unique issues that arise as a result of incarceration.
(l) The policy of the state regarding the determination of parental rights and responsibilities described in RSA 461-A:2.
(m) Any other additional factors the court deems relevant.

I-a. If the court concludes that frequent and continuing contact between each child and both parents is not in the best interest of the child, the court shall make findings supporting its order.

II. If the court finds by clear and convincing evidence that a minor child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature minor child as to the determination of parental rights and responsibilities. Under these circumstances, the court shall also give due consideration to other factors which may have affected the minor child's preference, including whether the minor child's preference was based on undesirable or improper influences.

III. In determining parental rights and responsibilities under this section, including residential responsibility, the court shall not apply a preference for one parent over the other because of the sex of the child, the sex of a parent, or the financial resources of a parent.

IV. If the court finds that a parent has been convicted of sexual assault or there has been a finding by a court of competent jurisdiction of sexual abuse against such parent's minor child or minor stepchild, the court may prohibit contact between such parent and the victim of the abuse and any sibling or step-sibling of the victim. The court shall make orders that best protect the victim of the abuse and the siblings and step-siblings of such victim.
(a) If a parent makes a good faith allegation based on a reasonable belief supported by facts that the parent's child is a victim of physical abuse or neglect or sexual abuse perpetrated by the other parent and if the parent making the allegation acts lawfully and in good faith in accordance with such belief to protect the child or seek treatment for the child, the parent making the allegation shall not be deprived of parenting time, or contact with the child based on reasonable actions taken in accordance with that belief.
(b) In this paragraph, "sexual abuse" shall mean sexual abuse as defined in RSA 169-C:3, XXVII-b, and "sexual assault" shall mean sexual assault as provided in RSA 632-A:2, RSA 632-A:3, and RSA 632-A:4.

V. If the court determines that it is in the best interest of the children, it shall in its decree grant reasonable visitation privileges to a party who is a stepparent of the children or to the grandparents of the children pursuant to RSA 461-A:13. Nothing in this paragraph shall be construed to prohibit or require an award of parental rights and responsibilities to a stepparent or grandparent if the court determines that such an award is in the best interest of the child.

VI. The court may appoint a guardian ad litem to represent the interests of the child according to RSA 461-A:16.

VII. At the request of an aggrieved party, the court shall set forth the reasons for its decision in a written order.

Source. 2005, 273:1. 2010, 273:1, 2. 2017, 156:200, eff. July 1, 2017. 2018, 202:3, 4, eff. Aug. 7, 2018.

Section 461-A:7

461-A:7 Mediation of Cases Involving Children. –

I. The general purpose of this section is to:

(a) Manage conflict and decrease acrimony between parties in a dispute concerning parental rights and responsibilities for minor children.

(b) Promote the best interest of children.

(c) Improve the parties' satisfaction with the outcome of disputes concerning parental rights and responsibilities.

(d) Increase the parties' participation in making decisions for themselves and their children.

(e) Increase compliance with court orders.

(f) Reduce the number and frequency of cases returning to court.

(g) Improve court efficiency.

II. The mediator has no authority to make a decision or impose a settlement upon the parties. The mediator shall attempt to focus the attention of the parties upon their needs and interests rather than upon their positions. Any settlement is entirely voluntary. In the absence of settlement, the parties lose none of their rights to a resolution of their dispute through litigation.

III. In all cases involving disputed parental rights and responsibilities or grandparents' visitation rights, including requests for modification of prior orders, the court may order the parties to participate in mediation. If the parties are ordered to participate in mediation under this section, all issues relevant to their case, including but not limited to child support and issues relative to property settlement and alimony under RSA 458, shall also be mediated unless the court orders otherwise.

IV. Reasons the court may choose not to order mediation include, but are not limited to, the following:

(a) A showing of undue hardship to a party.

(b) An agreement between the parties for alternate dispute resolution procedures.

(c) An allegation of abuse or neglect of the minor child.

(d) A finding of alcoholism or drug abuse, unless all parties agree to mediation.

(e) An allegation of serious psychological or emotional abuse.

(f) Lack of an available, suitable mediator within a reasonable time period.

V. The court shall not order mediation if there is a finding of domestic violence as defined in RSA 173-B:1, unless all parties agree to mediation.

VI. Either party may move to have the mediator replaced for good cause.

VII. Mediation proceedings shall be held in private, and all communications, oral or written, made during the proceedings, which relate to the issues being mediated, whether made by the mediator, or a party, or any other person present, shall be privileged and confidential and shall not be disclosed and shall not be admissible in court, except as provided in RSA 328-C:9.

VIII. Any mediated agreement reached by the parties on all or some of the disputed issues shall be reduced to writing, signed by each party, and filed with the court as soon as practicable.

IX. The parties shall participate at mediation in good faith. If the mediator determines that mediation is not helpful in resolving the dispute, the mediator shall report that fact to the court and return the matter to the court for adjudication of the underlying issues.

X. In the event both parties are indigent, the mediator shall be paid a set fee for his or her services. The amount of the fee shall be set annually by supreme court rule. The court may order each party to pay a proportional amount of said fee. The fee shall be paid from the mediation and arbitration fund established in RSA 490-E:4 and repaid by the parties in accordance with RSA 461-A:18, including fees for pre-suit marital mediation authorized pursuant to RSA 490-E:2, V. The supreme court shall determine by rule a percentage amount of the entry fee paid to each clerk of court for each

petition in domestic relations cases to be deposited into the mediation and arbitration fund to be used to pay for mediation where both parties are indigent. At no time shall the percentage amount exceed 25 percent of the entry fee for each petition.
XI. The supreme court shall establish rules and take such action as necessary to effectuate the purpose of this section.

Source. 2005, 273:1. 2011, 224:69, eff. July 1, 2011.

Section 461-A:8

461-A:8 Temporary Orders. –
After the filing of a petition concerning a minor child under this chapter, the court may issue orders with such conditions and limitations as the court deems just. The orders may be issued ex parte. The orders may include the following:
I. The temporary allocation of parental rights and responsibilities of any minor child as provided in RSA 461-A:6.
II. Payment of temporary support for the child, including the provision of health insurance.
III. If paternity is a contested and relevant issue, orders for paternity testing in accordance with RSA 522.

Source. 2005, 273:1, eff. Oct. 1, 2005.

Section 461-A:9

461-A:9 Ex Parte Orders. –
I. After the filing of a petition concerning a minor child under this chapter, the court may issue ex parte temporary orders. Ex parte orders may be granted without written or oral notice to the adverse party only if the court finds from specific facts shown by affidavit or by the verified petition, that immediate and irreparable injury or loss will result to the applicant or the child before the adverse party or attorney can be heard in opposition.
II. No ex parte order shall be granted without:
(a) An affidavit from the moving party verifying the notice given to the other party or verifying the attempt to notify the other party.
(b) A determination by the court that such notice or attempt at notice was timely so as to afford the other party an opportunity to be present.
III. If temporary orders are made ex parte, the party against whom the orders are issued may file a written request with the clerk of the court and request a hearing thereon. Such a hearing shall be held no later than 5 days after the request is received by the clerk.
IV. Ex parte orders may include the following terms:
(a) Directing any party to refrain from abusing or interfering in any way with the person or liberty of the other party.
(b) Enjoining any party from entering the premises wherein the other party resides upon a showing that physical or emotional harm would otherwise result.
(c) Enjoining any party from contacting the other party at, or entering, the other party's place of employment or school.
(d) Enjoining any party from harassing, intimidating, or threatening the other party, the other party's relatives regardless of their place of residence, or the other party's household members in any way.
(e) The temporary allocation of parental rights and responsibilities of any minor children as provided in RSA 461-A:6.

Source. 2005, 273:1, eff. Oct. 1, 2005.

Section 461-A:10

461-A:10 Restraining Orders. –

I. After the filing of a petition concerning a minor child under this chapter, the court may issue restraining orders with such conditions and limitations as the court deems just. At the discretion of the court, such orders may be made on a temporary or permanent basis. Temporary orders may be issued ex parte as provided in RSA 461-A:9. The orders may include the following:

(a) Directing any party to refrain from abusing or interfering in any way with the person or liberty of the other party.

(b) Enjoining any party from entering the premises wherein the other party resides upon a showing that physical or emotional harm would otherwise result.

(c) Enjoining any party from contacting the other party at, or entering, the other party's place of employment or school.

(d) Enjoining any party from harassing, intimidating or threatening the other party, other party's relatives regardless of their place of residence, or the other party's household members in any way.

II. When a party violates a restraining order issued under this section by committing assault, criminal trespass, criminal mischief, stalking, or another criminal act, that party shall be guilty of a misdemeanor, and peace officers shall arrest the party, detain the party pursuant to RSA 594:19-a and refer the party for prosecution. Such arrests may be made within 12 hours after a violation without a warrant upon probable cause whether or not the violation is committed in the presence of a peace officer.

Source. 2005, 273:1, eff. Oct. 1, 2005.

Section 461-A:11

461-A:11 Modification of Parental Rights and Responsibilities. –

I. The court may issue an order modifying a permanent order concerning parental rights and responsibilities under any of the following circumstances:

(a) The parties agree to a modification.

(b) If the court finds repeated, intentional, and unwarranted interference by a parent with the residential responsibilities of the other parent, the court may order a change in the parental rights and responsibilities without the necessity of showing harm to the child, if the court determines that such change would be in accordance with the best interests of the child.

(c) If the court finds by clear and convincing evidence that the child's present environment is detrimental to the child's physical, mental, or emotional health, and the advantage to the child of modifying the order outweighs the harm likely to be caused by a change in environment.

(d) If the parties have substantially equal periods of residential responsibility for the child and either each asserts or the court finds that the original allocation of parental rights and responsibilities is not working, the court may order a change in allocation of parental rights and responsibilities based on a finding that the change is in the best interests of the child.

(e) If the court finds by clear and convincing evidence that a minor child is of sufficient maturity to make a sound judgment, the court may give substantial weight to the preference of the mature minor child as to the parent with whom he or she wants to live. Under these circumstances, the court shall also give due consideration to other factors which may have affected the minor child's preference, including whether the minor child's preference was based on undesirable or improper influences.

(f) The modification makes either a minimal change or no change in the allocation of parenting time between the parents, and the court determines that such change would be in the best interests of the child.

(g) If one parent's allocation of parenting time was based in whole or in part on the travel time between the parents' residences at the time of the order and the parents are now living either closer to each other or further from each other by such distance that the existing order is not in the child's best interest.

(h) If one parent's allocation or schedule of parenting time was based in whole or in part on his or her work schedule and there has been a substantial

change in that work schedule such that the existing order is not in the child's best interest.
(i) If one parent's allocation or schedule of parenting time was based in whole or in part on the young age of the child, the court may modify the allocation or schedule or both based on a finding that the change is in the best interests of the child, provided that the request is at least 5 years after the prior order.
II. Except as provided in RSA 461-A:11, I(b)-(i) for parenting schedules and RSA 461-A:12 for a request to relocate the residence of a child, the court may issue an order modifying any section of a permanent parenting plan based on the best interest of the child. RSA 461-A:5, III shall apply to any request to modify decision-making responsibility.
III. For the purposes of this section, the burden of proof shall be on the moving party.

Source. 2005, 273:1. 2006, 232:1. 2007, 213:1. 2011, 162:1, 2. 2016, 134:1, 2, eff. Jan. 1, 2017.

Section 461-A:12

461-A:12 Relocation of a Residence of a Child. –
I. This section shall apply any time after the filing of a parenting petition or a divorce petition. This section shall not apply if the relocation results in the residence being closer to the other parent or to any location within the child's current school district.
II. This section shall apply to the relocation of any residence in which the child resides at least 150 days a year.
II-a. A parent shall not relocate a child without a court order unless relocation is necessary to protect the safety of the parent or child, or both.
III. Prior to relocating, the parent shall provide reasonable notice to the other parent. For purposes of this section, 60 days notice shall be presumed to be reasonable unless other factors are found to be present, or the parents have a written agreement to the contrary. Factors justifying shorter notice shall include, but are not limited to, relocation to protect the safety of the parent, child, or both, or relocation because the current abode is unavailable due to circumstances beyond the control of the parent.
IV. At the request of either parent, the court shall hold a hearing on the relocation issue. Either party may request that the court issue ex parte orders as provided in RSA 461-A:9 to prevent or allow relocation of the child. The court shall hold an evidentiary hearing on the relocation request in the following manner:
(a) In an open divorce or parenting case, the court shall hold a hearing within 30 days of the request for a hearing on the relocation issue.
(b) Following a petition to re-open a closed divorce or parenting case, the court shall hold a hearing within 30 days of service of the petition on the other party.
(c) The court may notice the initial hearing on relocation as a final hearing on relocation. If the court determines it needs additional information or time to make a final determination on the relocation of the child, it shall notice the initial hearing as a temporary hearing on the relocation issue. After the temporary hearing, the court shall issue a temporary order on the relocation request and schedule a final hearing no later than 60 days from the temporary hearing date, unless the parties agree otherwise.
V. The parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that:
(a) The relocation is for a legitimate purpose; and
(b) The proposed location is reasonable in light of that purpose.
VI. If the burden of proof established in paragraph V is met, the burden shifts to the other parent to prove, by a preponderance of the evidence, that the proposed relocation is not in the best interest of the child.
VII. If the court has issued a temporary order authorizing temporary relocation, the court shall not give undue weight to that temporary relocation as a factor in reaching its final decision.
VIII. The court, in reaching its final decision, shall not consider whether the parent seeking to relocate has declared that he or she will not relocate if

relocation of the child is denied.
IX. If the parties agree on or the court authorizes the relocation of a residence of a child, the court may modify the allocation or schedule of parenting time or both based on a finding that the change is in the best interests of the child.

Source. 2005, 273:1. 2016, 134:3, eff. Jan. 1, 2017. 2018, 202:5, eff. Aug. 7, 2018.

Section 461-A:13

461-A:13 Grandparents' Visitation Rights. –
I. Grandparents, whether adoptive or natural, may petition the court for reasonable rights of visitation with the minor child as provided in paragraph III. The provisions of this section shall not apply in cases where access by the grandparent or grandparents to the minor child has been restricted for any reason prior to or contemporaneous with the divorce, death, relinquishment or termination of parental rights, or other cause of the absence of a nuclear family.
II. The court shall consider the following criteria in making an order relative to a grandparent's visitation rights to the minor child:
(a) Whether such visitation would be in the best interest of the child.
(b) Whether such visitation would interfere with any parent-child relationship or with a parent's authority over the child.
(c) The nature of the relationship between the grandparent and the minor child, including but not limited to, the frequency of contact, and whether the child has lived with the grandparent and length of time of such residence, and when there is no reasonable cause to believe that the child's physical and emotional health would be endangered by such visitation or lack of it.
(d) The nature of the relationship between the grandparent and the parent of the minor child, including friction between the grandparent and the parent, and the effect such friction would have on the child.
(e) The circumstances which resulted in the absence of a nuclear family, whether divorce, death, relinquishment or termination of parental rights, or other cause.
(f) The recommendation regarding visitation made by any guardian ad litem appointed for the child pursuant to RSA 461-A:16.
(g) Any preference or wishes expressed by the child.
(h) Any such other factors as the court may find appropriate or relevant to the petition for visitation.
III. The petition for visitation shall be entered in the court which has jurisdiction over the divorce, legal separation, or a proceeding brought under this chapter. In the case of death of a parent, stepparent adoption, or unwed parents, subject to paragraph IV, the petition shall be entered in the court having jurisdiction to hear divorce cases from the town or city where the child resides.
IV. If the parent of the minor child is unwed, then any grandparent filing a petition under this section shall attach with the petition proof of legitimation by the parent pursuant to RSA 460:29 or establishment of paternity pursuant to RSA 168-A.
V. Upon the motion of any original party, the court may modify or terminate any order made pursuant to this section to reflect changed circumstances of the parties involved.
VI. Nothing contained in this section shall be construed to affect the rights of a child or natural parent or guardian under RSA 463 or adoptive parent under RSA 170-B:20.

Source. 2005, 273:1, eff. Oct. 1, 2005.

Section 461-A:14

461-A:14 Support. –

I. After the filing of a petition for divorce, annulment, separation, paternity, support, or allocation of parental rights and responsibilities, including petitions filed by the department of health and human services pursuant to RSA 161-B, 161-C, and 546-B, the court shall make such further decree in relation to the support and education of the children as shall be most conducive to their benefit and may order a reasonable provision for their support and education for the period of time specified in paragraphs IV, V, and XVI.

II. In any proceeding concerning the support of children:

(a) The parties shall certify in the initial pleading filed with the court whether or not public assistance is or was paid for the benefit of the children pursuant to RSA 167 and whether or not medical assistance is being provided for the benefit of the children pursuant to RSA 167. If public assistance is or was being provided or if medical assistance is being provided, the initiating party shall provide the department of health and human services, office of child support enforcement services, with copies of any and all pleadings related to medical and child support.

(b) If, during the pendency of the action, the children become the beneficiaries of public or medical assistance, both parties shall notify the court of the public or medical assistance status of the children and shall provide the department of health and human services with copies of all pleadings related to medical and child support.

(c) When notified that public or medical assistance is being provided for the benefit of the children, the court shall provide the office of child support with a copy of any hearing notice pertaining to any medical or child support proceeding.

(d) The department shall be granted leave to reopen any case to modify, clarify, or vacate any order that was entered against its interest when an assignment of rights pursuant to RSA 161 or RSA 167 is or was in effect and the department was not given notice of the proceeding.

(e) In any case to establish, modify, or enforce an order of support where the obligor is unable to meet child support obligations for any reason, except as provided in RSA 461-A:14, XIII(a) and (b), the court may order the obligor to apply for and, if qualified, participate in food stamp and Medicaid programs, federal disability programs, and all applicable department of employment security programs to enable or enhance the obligor's ability to meet his or her support obligations. When making such orders, the court shall include the requirement that the obligor report to the court his or her compliance with the order.

III. All support orders shall provide for the assignment of the wages of the responsible parent pursuant to RSA 458-B, subject to the exceptions listed in RSA 458-B:2.

IV. The amount of a child support obligation shall remain as stated in the order until the dependent child for whom support is ordered completes his or her high school education or reaches the age of 18 years, whichever is later, or marries, or becomes a member of the armed services, or is emancipated pursuant to an order of emancipation under RSA 461-B, at which time the child support obligation, including all educational support obligations, terminates without further legal action. If the parties have a child with disabilities, the court may initiate or continue the child support obligation after the child reaches the age of 18. No child support order for a child with disabilities which becomes effective after July 9, 2013 may continue after the child reaches age 21.

IV-a. If the order establishes a support obligation for more than one child, and if the court can determine that within the next 3 years support will terminate for one of the children as provided in paragraph IV, the amount of the new child support obligation for the remaining children may be stated in the order and shall take effect on the date or event specified without further legal action. Termination of support for any one of the children under paragraph IV is a substantial change of circumstances for purposes of modification of the child support order under RSA 458-C:7.

V. No child support order shall require a parent to contribute to an adult child's college expenses or other educational expenses beyond the completion of high school, except as provided in RSA 461-A:21.

VI. All support payments ordered or administered by the court under this chapter shall be deemed judgments when due and payable. Such judgments shall be given full faith and credit by all jurisdictions of this state.

VII. Liens shall arise by operation of law against real and personal property for child support arrearages owed by an obligor who resides or owns property in the state and shall incorporate any unpaid child support which may accrue in the future. Full faith and credit shall be given to such liens arising in another state when the state agency, a party, or other entity authorized to enforce an order of support and seeking to perfect the lien complies

with the procedural rules relating to recording or serving liens. Notwithstanding any law to the contrary, such rules may not require judicial notice prior to perfecting the lien. Notices of such liens, and any discharges or releases thereof, shall be filed in the office of the secretary of state with respect to personal property and in the registry of deeds for the county in which any real property is located. No fees shall be charged for such filings and recordings.

VIII. No modification of a support order shall alter any arrearages due prior to the date of filing the motion for modification.

IX. (a) Each child support order shall include the court's determination and findings relative to health care coverage, whether in the form of private health insurance or public health care, and the payment of uninsured medical expenses for the child. Health care coverage includes fee for service, health maintenance organization, preferred member organization, and other types of private health insurance and public health care coverage under which medical services could be provided to the dependent child.

(b) The court shall determine whether private health care coverage is accessible and is available to either parent at a cost that is at or below the reasonable medical support obligation amount, as established and ordered pursuant to RSA 458-C:3, V, or is available by combining the reasonable medical support obligations of both parents, and, if so available, the court shall order the parent, or parents, to provide such insurance for the child. The cost of providing private health care coverage is the cost of adding the child to existing coverage, or the difference between individual and family coverage. Accessible health care coverage means the primary care services are located within 50 miles or one hour from the child's primary residence.

(c) If the court determines that private health care coverage is not accessible or available at a cost that is at or below the reasonable medical support obligation amount, the court shall establish a cash medical support obligation for either or both parents, equal to the reasonable medical support obligation amount, and order that either or both parents shall obtain such private health care coverage if it subsequently becomes accessible and available at a cost that is at or below the reasonable medical support obligation amount. When ordered in lieu of private health care coverage, an obligation for cash medical support shall be suspended and shall not accrue during such time as the obligated parent is providing private health care coverage in accordance with this paragraph.

(d) In all cases where support is payable through the department, or where the department is providing medical assistance for the child under RSA 167, the court shall include the medical support obligation in any order issued on or after the effective date of this paragraph.

(e) A court may order either or both parents to pay a medical support obligation, either to provide health care coverage or as cash medical support, in excess of the reasonable medical support obligation amount, in such other circumstances, as the court deems appropriate.

X. If both parents have private health insurance for the child, the insurance of the person who is obligated by court order to provide health care coverage shall be the primary coverage for the child. This paragraph shall not affect the obligation of the insurance carrier of the parent who is not obligated to provide health care coverage for the child to provide medical insurance benefits for any claim under a policy held by such parent.

XI. All support orders issued or modified in cases that are payable through the department shall contain a provision requiring the obligor to keep the department informed of the name and address of the obligor's employer and whether the obligor has access to health care coverage, and, if so, the health care policy or program information as requested by the department.

XII. In any proceeding to enforce the payment of child support, the posting of bail shall be for the purpose of securing the appearance of the child support obligor and to guarantee the child support judgment owed by the child support obligor. If a child support obligor defaults for failure to appear or owes a child support arrearage, any bail money posted by the obligor, or any other surety, which is on deposit with the court shall be forfeited and paid to the obligee or the agency enforcing the order for child support in satisfaction of the child support judgment.

XIII. (a) An order of support, for which there is in effect an assignment to the department of health and human services pursuant to RSA 161-C:22, shall be suspended and shall not accrue, and no public assistance debt shall be incurred, during such time as the responsible parent receives benefits pursuant to Title XVI of the Social Security Act under the supplemental security income program or public assistance pursuant to RSA 167 under any of the following programs:

(1) Aid to the permanently and totally disabled.

(2) Aid to the needy blind.

(3) Aid to families with dependent children.

(4) Old age assistance.
(b) The department shall not enforce any order of support against the responsible parent while that parent receives public assistance through any of the programs listed in subparagraph (a), whether or not an assignment of support rights to the department exists.
XIV. When the court makes a temporary or final order for support through the department of health and human services, the order shall require the parties to furnish their social security numbers to the department.
XV. The court shall have jurisdiction to make such orders or temporary orders of support to the children of divorced parents as justice shall require in cases where the decree of divorce was not granted in this jurisdiction, even though the divorce decree makes provision for support, subject to the provisions of RSA 546-B.
XVI. The court may establish a separate fund or trust for the support, maintenance, education and general welfare of any minor or incompetent child of the parties, including an incompetent child who is 18 years of age or older.
XVII. The court may require security to be given for the payment of child support.
XVIII. Any motion for contempt of a court order regarding nonpayment of child support, if filed by a parent, shall be reviewed by the court within 30 days. When the arrearage equals or exceeds the equivalent of 8 weeks of child support under the existing order, the matter of the arrearage may be scheduled for mediation through the court within 30 days of the filing of the motion for contempt of court unless a hearing on the motion is scheduled earlier. The mediation shall not consider modification of the child support order. The court shall not order mediation if there is a finding of domestic violence as defined in RSA 173-B:1, unless all parties agree to the mediation.

Source. 2005, 273:1. 2007, 121:2; 227:7. 2008, 245:3. 2010, 166:6; 321:1. 2013, 154:1; 201:1. 2014, 225:1, eff. July 14, 2014. 2018, 230:1, eff. Aug. 7, 2018. 2019, 110:2, eff. Jan. 1, 2020; 287:14, eff. July 19, 2019.

Section 461-A:15

461-A:15 Attorneys' Fees in Contempt Cases. – In any proceeding under this chapter in which a party alleges, and the court finds, that the other party has failed without just cause to obey a prior order, the court shall award reasonable costs and attorneys' fees to the prevailing party.

Source. 2005, 273:1, eff. Oct. 1, 2005.

Section 461-A:16

461-A:16 Guardian ad Litem. –
I. In contested proceedings under RSA 461-A, the court may appoint a guardian ad litem for a minor child when the court has reason for special concern regarding the welfare of the child. The role of the guardian ad litem shall be to gather information to assist the court in determining the best interests of the child. In determining whether to appoint a guardian ad litem, the court shall consider:
(a) The wishes of the parties;
(b) The age of the child;
(c) The nature of the proceeding, including the contentiousness of the hearing;
(d) The financial resources of the parties;
(e) The extent to which a guardian ad litem may assist in providing information concerning the best interest of the child;
(f) Whether the family has experienced a history of domestic abuse;
(g) Abuse of the child by one of the parties;

(h) The educational needs of the child; and
(i) Any other factors the court deems relevant.
I-a. The court shall specify the issues to be addressed by the guardian ad litem in his or her report and may otherwise limit the role of the guardian ad litem.
I-b. The guardian ad litem may participate in hearings and conferences by telephone, except for evidentiary hearings on parenting.
I-c. The guardian ad litem shall file a report of his or her investigation no later than the date of the final pretrial hearing. The report shall not propose any of the following unless specifically requested by the court:
(a) An allocation of decision-making responsibility;
(b) A parenting plan; or
(c) A specific parenting schedule.
I-d. At the court's request or with the court's approval, the guardian ad litem may file a supplemental report on specific issues. A preliminary or temporary report shall not be required unless one is ordered by the court due to the extraordinary or special circumstances of the case.
II. Persons accepting appointment as guardians ad litem agree to serve as officers of the court and have such standing in the proceedings as the court deems appropriate and may, upon approval of the court, utilize the service of others found necessary by the court to represent the child's best interest.
III. Guardians ad litem shall respect communications between themselves and the child and shall disclose such information only as required by the court in rendering a report. All parties to the case shall have access to, and receive a copy of, any report made by the guardian ad litem unless the court explicitly finds that such disclosure is not in the child's best interest. When the child's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or some other reason, the guardian ad litem shall be the holder of the privilege and shall have the authority to waive the privilege, but only if the guardian ad litem reasonably believes that the child cannot adequately act in the child's own interest.
IV. When a guardian ad litem is appointed pursuant to this section, the court shall establish a maximum fee for the appointment in accordance with this section.
(a) When appointing a guardian ad litem to be paid from a state fund, the court shall establish an hourly rate and a maximum fee for the appointment, which shall not exceed the hourly rate and maximum fee established by court rule for abuse and neglect cases. No funding from a state fund for guardian ad litem fees shall be available to a party whose income is 200 percent or more of the federal poverty level.
(b) When appointing a guardian ad litem to be paid directly by the parties, the hourly rate and maximum fee for the appointment shall be established by written agreement between the guardian ad litem and the parties. The hourly rate shall be not more than twice the rate for state fund cases and shall not exceed 23 hours, unless the parties agree otherwise. The fees for services of the guardian ad litem and others utilized by the guardian and approved by the court shall be a charge against the parties in a proportional amount, as determined by the court. In determining the responsibility for payment or repayment, the court shall consider:
(1) The income of the parties;
(2) The marital or nonmarital assets of the parties;
(3) The division of property made as part of the final divorce, if applicable;
(4) Which party requested appointment of the guardian ad litem; and
(5) Other relevant factors.
V. The guardian ad litem shall not exceed the maximum fee for the appointment, or provide services, without prior approval from the court, after a hearing. If the parties agree to the guardian ad litem's request to exceed the maximum fee, the hearing may be waived.
VI. Unless otherwise ordered by the court or by agreement of the parties, the services of the guardian ad litem shall conclude upon the issuance of the final order.

Source. 2005, 273:1. 2011, 224:65, 79. 2014, 301:1. 2015, 23:1, eff. May 5, 2015. 2018, 307:1, eff. Jan. 1, 2019.

Section 461-A:17

461-A:17 Guardians Ad Litem and Mediators; Liability for Expenses. – The judicial council shall have no responsibility for the payment of the costs of a mediator or guardian ad litem for any party under this chapter.

Source. 2005, 273:1. 2011, 224:66, eff. July 1, 2011.

Section 461-A:18

461-A:18 Repayment. –

I. In any case where a mediator has been appointed pursuant to RSA 461-A:7 or a guardian ad litem has been appointed pursuant to RSA 461-A:16 and the responsible party's proportional share of the expense was ordered to be paid by the judicial council from the prior special fund established pursuant to RSA 461-A:17 or is ordered to be paid by the judicial branch from the mediation and arbitration fund pursuant to RSA 490-E:4, the party shall be ordered by the court to repay the state through the unit of cost containment, office of administrative services, the fees and expenses paid on the party's behalf as the court may order consistent with the party's ability to pay, such ability to be determined by the unit of cost containment.

II. The court's order of appointment of a mediator or a guardian ad litem under the provisions of paragraph I shall indicate the initial proportional share or shares of fees and expenses and shall contain an order that the party or parties communicate with the unit of cost containment so that it may determine the obligor's ability to reimburse the state and establish the terms and conditions of reimbursement. A copy of each order shall be sent to the unit of cost containment, office of the commissioner of administrative services, at the time it is made.

III. Any party subject to an order under this section may petition the court having jurisdiction over the case for relief of the obligation imposed by this section, which shall be granted only upon a finding that the party is unable to comply with the terms of the court's order or any modification of the order by the court or the terms of reimbursement established by the unit of cost containment. In any such appeal the burden of persuasion shall be upon the party to show why the determinations of the unit of cost containment should not be enforced.

IV. Any party subject to orders for repayment shall be required to notify the clerk of the court and the unit of cost containment of each change of mailing address and actual street address. Whenever notice to the party is required, notice to the last known mailing address on file shall be deemed notice to and binding on the party.

Source. 2005, 273:1. 2011, 224:70, eff. July 1, 2011.

Section 461-A:19

461-A:19 Authorization for Emergency Treatment When Custodial Parent Incapacitated. –

I. In cases where the parent having the care of the child, has sole or shared decision-making responsibility and has become incapacitated and is unable to make necessary decisions concerning the emergency medical treatment of the child, such parent's spouse shall be authorized to make such decisions subject to the following conditions:

(a) The child is in the care of a medical facility whose policy requires that all decisions regarding treatment of the type necessary under the circumstances be made by a parent having sole or shared decision-making responsibility; and

(b) Either the incapacitated parent has sole decision-making responsibility; or, if there is shared decision making responsibility, the other parent cannot be located, and in the opinion of the treating physician, circumstances make it necessary to make a decision regarding treatment immediately.

II. The right to authorize treatment granted under this section shall under no circumstances last longer than 30 days, and otherwise shall terminate upon the recovery of the parent to normal capacity, or upon the establishment of contact with the other parent, whichever occurs first.

Source. 2005, 273:1, eff. Oct. 1, 2005.

Section 461-A:20

461-A:20 References to Child Custody and Custodial Parent. – Any provision of law that refers to the "custody" of minor children shall mean the allocation of parental rights and responsibilities as provided in this chapter. Any provision of law which refers to a "custodial parent" shall mean a parent with 50 percent or more of the residential responsibility and any reference to a non-custodial parent shall mean a parent with less than 50 percent of the residential responsibility.

Source. 2005, 273:1, eff. Oct. 1, 2005.

Section 461-A:21

461-A:21 Agreement on College Expenses. – Parents may agree to contribute to their child's college expenses or other educational expenses beyond the completion of high school as part of a stipulated decree, signed by both parents and approved by the court. The agreed-on contribution may be made by one or both parents. The agreement may provide for contributions to an account to save for college, for the use of an asset, or for payment of educational expenses as incurred. Any such agreement shall specify the amount of the contribution, a percentage, or a formula to determine the amount of the contribution.

Source. 2013, 154:2, eff. Aug. 27, 2013.

Section 461-A:22

461-A:22 Modification of Agreements on College Expenses. – Every agreement made under RSA 461-A:21 shall state whether the agreement either is modifiable or is not modifiable. To qualify as not modifiable, the agreement shall state a specific dollar amount to be contributed by either or both parents. If the parents' agreement states that it is modifiable, the legal test for modification shall be a substantial change in circumstances that was not foreseeable when the agreement was signed.

Source. 2013, 154:2, eff. Aug. 27, 2013.

Section 461-A:23

461-A:23 Enforcement of Agreements on College Expenses. – The court shall enforce any parental agreement on educational expenses that meets the requirements of RSA 461-A:21.

Source. 2013, 154:2, eff. Aug. 27, 2013.

Section 461-A:24

461-A:24 Mediation of Agreements on College Expenses. – Before any court hearing to modify or enforce any agreement to contribute to college expenses, the parties shall participate in mediation, either privately contracted mediation or mediation under RSA 461-A:7.

Source. 2013, 154:2, eff. Aug. 27, 2013.

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
http://www.courts.state.nh.us

Court Name: _____

Case Name: **In the Matter of Anne and Lucinda**

Case Number: **111-2021-DM-0000**

PARENTING PLAN

This parenting plan is: **(Choose one)**

☐ Agreed upon ☐ Proposed by _____ (parent's name) ☑ Developed by Court

This parenting plan is: **(Choose one)**

☐ Temporary: The completed paragraphs apply until the case is concluded. If you are requesting a temporary order on parenting issues, you should include as many of these parenting plan topics as you will need to carry your family through until all parenting issues are resolved.

☑ Final: All completed paragraphs shall be incorporated in the Court's final order.

☐ Changing a prior final Parenting Plan or a prior permanent order on parental rights and responsibilities.

The parental rights and responsibilities statute, RSA 461-A, requires any party in a divorce, legal separation, or parenting (formerly known as "custody") case to file a parenting plan, whether s/he is seeking an order establishing parental rights and responsibilities or an order modifying such rights and responsibilities. The statute also requires that the parenting plan include a detailed parenting schedule for each child, specifying the periods when each parent has residential responsibility or non-residential parenting time.

As you complete the Parenting Plan, please bear in mind this state's policy (below) as set forth in RSA 461-A:2. This policy will guide the court in making decisions affecting your parental rights and responsibilities.

Because children do best when both parents have a stable and meaningful involvement in their lives, it is the policy of this state, unless it is clearly shown that in a particular case it is detrimental to a child, to:

(a) Support frequent and continuing contact between each child and both parents.

(b) Encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or divorced.

(c) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, unless there is evidence of domestic violence, or child abuse/neglect.

(d) Grant parents and courts the widest discretion in developing a parenting plan.

(e) Consider both the best interests of the child in light of the factors listed in RSA 461-A:6 and the safety of the parties in developing a parenting plan.

However, pursuant to RSA 461-A:6, I-a, if the court concludes that frequent and continuing contact between each child and both parents is not in the best interest of the child, the court shall make findings supporting its order.

Case Name: In the Matter of Anne and Lucinda
Case Number: 111-2021-DM-0000
PARENTING PLAN

This parenting plan is for the following child(ren) born to, or adopted by, the parties:

Full Name	Date of Birth	Full Name	Date of Birth
1. Cedric	01/01/2013	2. Maria	01/02/2015
3. Thomas	01/03/2017	4.	
5.		6.	

A. Decision-Making Responsibility:

1. Major Decisions: These include, but are not limited to, decisions about the child(ren)'s education, non-emergency health and dental care, and religious training: **(Choose one)**

☑ (a) Joint Decision-Making: Both parents shall share in the responsibility for making major decisions about the child(ren).

Note: If parents have joint decision-making responsibility, RSA 461-A:4 requires parenting plans to include the legal residence of each parent unless the court finds that there is a history of domestic abuse or stalking or that including such information would not be in the best interest of the child(ren). If the parenting plan includes a parent's residence, the parent shall be responsible for promptly notifying the court and the other parent of any change in residence. The failure to provide such information may result in a finding of contempt of court.

Legal Residence of Anne (parent's name)

2 Move Away
Concord, NH 03301

Legal Residence of Lucinda (parent's name)

1 Party Way
Concord, NH 03301

☐ The court finds that there is a history of domestic abuse or stalking or that including such information would not be in the best interest of the child(ren).

☐ (b) Sole Decision-Making: _____ (parent's name) shall have sole decision-making authority on major decisions about the child(ren).

2. Day-To-Day Decisions: Each parent shall make day-to-day decisions for the child(ren) during the time he/she is caring for the child(ren). This includes any emergency decisions affecting the health or safety of the child(ren). A parent who makes an emergency decision shall share the decision with the other parent as soon as reasonably possible.

3. Other Provisions: _____

B. Residential Responsibility & Parenting Schedule:

1. Routine schedule: **(Choose one)**

☐ (a) Set forth the detailed parenting schedule for the child(ren) specifying periods when each parent has residential responsibility or non-residential parenting time (such as dinners or other parenting time that is not overnight).

NOTE: Neither parent shall be described as having the child "reside primarily" with him or her or as having "primary residential responsibility" or "custody" or be designated as the "primary residential parent":

Lucinda must not be consuming alcohol or drugs. Lucinda shall have parenting time with the children every other weekend and Wednesday's for dinner. Anne shall have parenting time with the children at all other times. Lucinda may have additional time so long as the parties agree on the date and time and Lucinda is substance free at the time of such visits.

☐ (b) The child(ren) shall reside solely with _____ (parent's name). Based on the following, the court concludes that frequent and continuing contact between each child and both parents is not in the best interest of the child and makes the following findings in support of this order:

2. Holiday and Birthday Planning: **(Choose (a), (b), or (c))**

☐ (a) No holiday and birthday schedule shall apply. The routine schedule set forth above shall apply.

☑ (b) Holiday and birthday parenting time shall be as the parties agree.

☐ (c) The holidays and birthday(s) listed below should be shared as described. Specify start and end times and days/dates as necessary. (For example, Thanksgiving: One parent—even years, other parent—odd years, starting on the Wednesday prior to Thanksgiving at 6pm, ending the Friday after Thanksgiving at 6pm). Parenting time on holidays and birthdays which are not checked and described shall be according to the routine schedule set forth above.

☑ Mother's Day **With Lucinda for the day**

☑ Father's Day **With Anne for the day**

☑ July 4th **Even years with Lucinda, odd years with Anne (8am-8pm for both)**

☑ Thanksgiving **Even years with Lucinda, odd years with Anne (8am-8pm for both)**

☐ Christmas Eve _____

☐ Christmas Day _____

☐ Child(ren)'s Birthday(s) _____

☐ One Parent's Birthday _____

☐ Other Parent's Birthday _____

☐ Other religious, civil and family celebrated special occasions:

_____

_____

3. Three-day weekends: **(Choose (a), (b), or (c))**

☑ (a) No three-day weekend schedule shall apply. The routine schedule set forth above shall apply.

☐ (b) The parent exercising parenting time on the weekend before a Monday holiday shall have parenting time on that Monday holiday.

☐ (c) The three-day weekends listed below should be shared as listed and described. Parenting time on three-day weekends which are not checked and described shall be according to the routine schedule set forth above.

☐ M. L. King Jr. Civil Rights Day _____

☐ Presidents' Day _____

☐ Memorial Day _____

☐ Labor Day _____

☐ Columbus Day _____

☐ Other _____

4. Vacation Schedule:

(a) December Vacation: **(Choose one)**

☑ (i.) No December vacation schedule shall apply. The routine schedule set forth above shall apply.

☐ (ii.) The parent exercising parenting time with the child(ren) on Christmas Eve (as outlined above) shall have the following additional parenting time with the child(ren) over the December vacation:

_____

_____

The parent exercising parenting time with the child(ren) on Christmas Day (as outlined above) shall have the following additional parenting time with the child(ren) over December vacation:

_____

_____

☐ (iii.) The above choices do not fit this parenting situation. Instead, the residential schedule for the child(ren)'s December vacation shall be as follows:

_____

_____

(b) February, April, and Summer Vacations. Specify the day of the week vacation starts and ends, if necessary. **(Choose one)**

☑ (i.) No February, April, or summer vacation schedule shall apply. The routine schedule set forth above shall apply.

☐ (ii.) The child(ren) shall reside with _____ (parent's name) during February vacation, except for the following days and times when the child(ren) shall be with the other parent:

_____

_____

The child(ren) shall reside with _____ (parent's name) during April vacation, except for the following days and times when the child(ren) shall be with the other parent:

_____

_____

The child(ren)'s summer residential schedule shall be as follows:

_____

_____

☐ (iii.) The above choices do not fit this parenting situation. Instead, the residential schedule for the child(ren)'s February, April, and summer vacations shall be as follows:

_____

_____

_____

(c) Other Vacations - describe the schedules for any other vacations:

_____

5. Supervised Parenting Time: **(Choose one)**

☐ (a) Not applicable.

☐ (b) The residential schedule is subject to the restrictions or limitations set out as follows:

☐ (i.) All parenting time of _____ (parent's name(s)) shall be at a supervised visitation center that uses a metal detection device and has trained security personnel onsite.

☑ (ii.) Other:

If Lucinda consumes alcohol/drugs on any of her days, a supervisor approved by Archibald shall be present.

6. Other Parental Responsibilities:

Each parent shall promote a healthy, beneficial relationship between the child(ren) and the other parent and shall not demean or speak out negatively in any manner that would damage the relationship between either parent and the child(ren).

Neither parent shall permit the child(ren) to be subjected to persons abusing alcohol or using illegal drugs. This includes the abuse of alcohol or the use of illegal drugs by the parent.

The parties agree to, or the court establishes, the following additional expectations: **(Choose all that apply)**

☑ (a) A parent requesting a temporary change to the parenting schedule shall act in good faith and ask the other parent about such change as soon as possible. The parents are expected to fairly adjust parenting schedules when family situations, illnesses, or other commitments make modification reasonable.

☑ (b) If a parent requires child care by some person who does not reside in his or her residence, for a period reasonably expected to last longer than 8 hours, then the other parent shall be offered the opportunity to parent the child. This section does not apply to regularly scheduled day care.

☑ (c) Each parent shall supply the appropriate child(ren)'s clothing for them for their scheduled time with the other parent. These clothes are to be considered the child(ren)'s clothes and shall be returned with the child(ren).

☑ (d) Each parent shall be responsible for ensuring that the child(ren) attend regularly scheduled activities, including but not limited to sports and extra-curricular activities, while the child(ren) are with that parent.

☑ (e) As the child(ren) get older, their individual interests may impact the parenting schedule set forth in this parenting plan. Each parent shall be flexible in making reasonable adjustments to the parenting schedule as the needs and interests of their maturing children require.

☑ (f) Other Parenting Responsibilities:

Neither parent shall use alcohol or any illegal substance while in the presence of the children.

C. Legal Residence of a Child for School Attendance: (Choose one)

☐ 1. The parties agree that, as allowed by RSA 193:12, II(a)(2) their child's legal residence for school attendance purposes shall be _____ (parent's name) residence. See the attached Agreement and Parenting Plan Order Designating School District **(NHJB 2763-F)**. Each parent shall furnish a copy of the Agreement to the school district in which the parent resides.

☑ 2. The court orders that the child(ren) shall attend school in the New Hampshire school district where parent Anne (parent's name) resides.

☐ 3. The child(ren) shall attend school in the school district where the parent with sole residential responsibility resides. Under this plan, that parent is _____

☐ 4. Other provisions regarding school:

D. Transportation and Exchange of the Child(ren): (Choose all that apply)

☑ 1. Transportation arrangements for the child(ren) between parents shall be as follows:

As the parties agree.

☐ 2. Unless both parents agree upon a different meeting place, the exchange of the child(ren) shall be at:

☑ 3. Transportation costs shall be shared as follows:

☑ 4. Other: NA

E. Information Sharing and Access, Including Telephone and Electronic Access:

Unless there is a court order stating otherwise:
Both parents have equal rights to inspect and receive the child(ren)'s school records, and both parents are encouraged to consult with school staff concerning the child(ren)'s welfare and education. Both parents are encouraged to participate in and attend the child(ren)'s school events.

Both parents have equal rights to inspect and receive governmental agency and law enforcement records concerning the child(ren).

Both parents have equal rights to consult with any person who may provide care or treatment for the child(ren) and to inspect and receive the child(ren)'s medical, dental or psychological records, subject to other statutory restrictions.

Each parent has a continuing responsibility to provide a residential, mailing, or contact address and contact telephone number to the other parent.

Each parent has a continuing responsibility to notify the other parent of any emergency circumstances or substantial changes or decisions affecting the child(ren), including the child(ren)'s medical needs, as close in time to the emergency circumstance as possible.

1. Parent-Child Telephone Contact: **(Choose one)**

The children shall be given privacy during their conversations with either parent. While the child(ren) reside with one parent, the other parent shall be permitted to speak by telephone with the child(ren):

☑ (a) At reasonable times.

☐ (b) At the following times only: _____

☐ (c) Other: _____

2. Parent-Child Written Communication: **(Choose one)**

☑ (a) Both parents and child(ren) shall have the right to communicate in writing or by e-mailing during reasonable hours without interference or monitoring by the other parent.

☐ (b) Specific agreements/orders regarding written or e-mail access between child(ren) and parent(s):

_____

_____

F. Relocation of a Residence of a Child: (Choose one)

☑ 1. The relocation of a child's residence in which s/he lives at least 150 days per year is governed by RSA 461-A:12. Any time after the filing of a parenting or divorce petition, a parent shall not relocate the residence of a child without a court order unless: 1) relocation results in the residence being closer to the other parent, or 2) relocation is to any location within the child's current school district, or 3) relocation is necessary to protect the safety of the parent or child, or both, as later determined by the court. In general, either parent may move the child's residence if it results in the parents living closer and if it will not affect the child's school enrollment. Prior to relocating the child's residence farther from the other parent or in such a way that school enrollment will be impacted, the parent shall provide reasonable notice to the other parent. For purposes of this section, 60 days notice shall be presumed to be reasonable unless other factors are found to be present or the parents have a written agreement to the contrary. At the request of either parent, the court shall hold a hearing on the relocation issue. Either parent may request that the court issue ex parte orders as provided in RSA 461-A:9 to prevent or allow relocation of the child(ren).

☐ 2. This parenting plan shall expressly govern the relocation issue as follows:
In addition to the provisions of RSA 461-A:12, this plan shall include the following relocation details:

_____

_____

_____

_____

G. Procedure for Review and Adjustment of Parenting Plan: (Choose one)

☑ 1. The parents shall meet as set out below to review this parenting plan and the well-being of the child(ren). Any agreed-on changes shall be written down and shall include the grounds for modification from those listed in RSA 461-A:11. (Found at: http://www.gencourt.state.nh.us/rsa/html/XLIII/461-A/461-A-11.htm) Any agreement shall be signed by both and filed with the court. (Each should keep a copy.) **Choose (a), (b), (c), or (d).**

☐ (a) Meetings shall be in _____ (month).

☐ (b) Meetings shall be yearly.

☐ (c) Meetings shall be every 2 years.

☑ (d) Meetings shall not be on a set schedule but shall be as often as necessary for the benefit of the child(ren).

☐ 2. Other:

_____

H. Method(s) for Resolving Disputes: (Choose one)

☑ 1. In the future, if the parents have a disagreement about parenting issues, the parents shall try to work it out in the best interest of the child(ren). They are encouraged to seek the help of a neutral third party to assist them. If the parents are unable to work out the disagreement they may ask the court to decide the issue.

☐ 2. Other: _____

I. Other parenting agreements important to the parents or child(ren) are listed below or are set forth in the _____ number of attached pages.

Both parents shall speak in a respectful manner about the other in the presence of the children. They shall also encourage a healthy relationship with the children's maternal and paternal grandparents and other family members.

Date

Signature of Petitioner

Date

Signature of Attorney/Witness for Petitioner

Date

Signature of Respondent

Date

Signature of Attorney/Witness for Respondent

Date

Signature of Guardian *ad Litem*

Recommended:

Date

Signature of Marital Master

Printed Name of Marital Master

So Ordered:

I hereby certify that I have read the recommendation(s) and agree that, to the extent the marital master/judicial referee/hearing officer has made factual findings, she/he has applied the correct legal standard to the facts determined by the marital master/judicial referee/hearing officer.

Date

Signature of Judge

Printed Name of Judge

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2019-0493, In the Matter of Katherine Harper and Matthew Broas, the court on September 22, 2020, issued the following order:

Having considered the briefs and oral arguments of the parties, the court concludes that a formal written opinion is unnecessary in this case. The respondent, Matthew Broas (Father), appeals a decision of the Circuit Court (Alfano, J.) adopting the recommendation of a Marital Master (Cooper, M.) denying Father's relocation and modifying the parties' parenting plan. We reverse in part, vacate in part, and remand.

The following facts were found by the trial court or recite the contents of documents contained in the record. Father and the petitioner, Katherine Harper (Mother), are the parents of two minor daughters. Mother lives in Concord and, prior to the relocation at issue here, Father lived in Salisbury. A final parenting plan regarding the children was entered in 2015. It awarded Father primary residential responsibility, provided that the children would attend school in the district where Father resides, and ordered a routine schedule of parenting time for Mother. The parties subsequently "deviated from the routine schedule on an ad hoc basis" and, over the year preceding this action, had been "essentially follow[ing] a shared parenting schedule."

In September 2018, Father signed a purchase and sale agreement on a house in New London. He informed Mother of the impending move in December. Mother did not agree to the move, but "followed up with an e-mail within a few weeks asking him for proposals regarding a change in the schedule."

Father did not petition for court approval of his relocation of the children and, accordingly, Mother filed a petition to enjoin it. The court held an initial hearing, entered temporary orders, and, after further hearing, issued the order on appeal. In that order, the court granted Mother's motion for directed verdict and denied Father's relocation, even though, by that time, Father had already moved to New London. The court also modified the parties' parenting plan, reasoning that, "[a]s neither parent resides in the Salisbury School District and the parties are not able to agree on a school district, the court must make adjustments to the parties['] Parenting Plan to reflect their current circumstances."

On appeal, Father argues that the trial court erred in: (1) applying the 2018 substantive amendments to RSA 461-A:12 to this case; (2) granting Mother's motion for directed verdict; and (3) modifying the parties' parenting time. He also contends that the trial court unsustainably exercised its discretion in denying his intrastate move and made factual findings that lack support in the record.

Father's first argument concerns the application of paragraph II-a of RSA 461-A:12, which was added to the statute in 2018. See RSA 461-A:12, II-a (Supp. 2019). That paragraph provides: "A parent shall not relocate a child without a court order unless relocation is necessary to protect the safety of the parent or child, or both." Id. Father argues that the trial court "impermissibly retroactively applied RSA 461-A:12, II-a to [him]," in contravention of "his constitutional right to travel."

Mother counters that the "issue of whether RSA 461-A:12 as amended should be applied prospectively or retrospectively to parenting plans drafted prior to August 7, 2018, is irrelevant to the instant case." She contends that although the trial court ruled that Father violated RSA 461-A:12, II-a by not obtaining a court order prior to relocating, that ruling "was not the basis for the court's denial of his request to relocate." We agree with Mother that we need not address the issue of retrospectivity to decide this case, and accordingly, we decline to do so. As Mother points out, the trial court's "clearly articulated . . . basis for denying [Father's] proposed relocation was . . . failure to meet his burden under RSA 461-A:12, V(b) that his relocation was reasonable in light of a legitimate purpose."

Father next argues that the trial court erred in granting Mother's motion for directed verdict. "Because motions for directed verdict relate to the sufficiency of the evidence, they present questions of law which we review de novo." Stachulski v. Apple New England, LLC, 171 N.H. 158, 168 (2018). "A party is entitled to a directed verdict only when the sole reasonable inference that may be drawn from the evidence, which must be viewed in the light most favorable to the nonmoving party, is so overwhelmingly in favor of the moving party that no contrary verdict could stand." DeBenedetto v. CLD Consulting Eng'rs, 153 N.H. 793, 812 (2006). A plaintiff "may not avoid a directed verdict by presenting evidence that is merely conjectural in nature," but rather, "must present sufficient evidence to satisfy the burden of proof such that a reasonable [factfinder] could find in [his] favor." Figlioli v. R.J. Moreau Cos., 151 N.H. 618, 621 (2005).

Mother contends that a directed verdict in her favor was appropriate because Father failed to introduce evidence sufficient to sustain his burden of proof. The parties' respective burdens are set forth in paragraphs V and VI of RSA 461-A:12:

V. The parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that:

(a) The relocation is for a legitimate purpose; and

(b) The proposed location is reasonable in light of that purpose.

VI. If the burden of proof established in paragraph V is met, the burden shifts to the other parent to prove, by a preponderance of the evidence, that the proposed relocation is not in the best interest of the child.

RSA 461-A:12, V, VI (2018).

The trial court noted that Father's stated reason for relocating was "the need . . . [for] more suitable housing for the girls" given that their "housing in Salisbury was a second-floor apartment" at a busy intersection with "dogs located with the tenants on the first floor." The court found Father's "objective in this regard to be legitimate." The court concluded, however, that "the location of the housing [Father] ultimately obtained [was not] reasonable."

Father contends that the trial court erred by failing to view the evidence in the light most favorable to him as the nonmoving party, as required in the standard for ruling on a motion for directed verdict. He further contends that "[i]nstead of analyzing [Mother's] motion for directed verdict under the facts before it, the trial court . . . made assumptions . . . to assert that [Father] should have looked elsewhere for a suitable place to live." Specifically, the court noted that the home Father chose to purchase was listed at $533,000.00, and then assumed: (1) that Father did not pay the asking price; and (2) that "there may well have been other housing in the Concord area — or Salisbury area — within the $400,000.00 range." The court then concluded that Father's "new residence . . . is 21 miles further away from that of [Mother] . . . and is not rationally related to achieving [Father's] objective, particularly when other options appear to have been available."

Father argues that the trial court "wrongly imposed on [him] the burden to show he could not find housing in Concord, where [Mother] lived, or closer to her." Although the trial court did not explicitly cite supporting authority for its conclusion, it appears to have relied upon language in Tomasko v. Dubuc, 145 N.H. 169 (2000), which we quoted from the Supreme Court of Connecticut's decision in Ireland v. Ireland, 717 A.2d 676 (Conn. 1998), superseded by statute as stated in Hardy-Harris v. Harris, No. 0740246475, 2008 WL 2039259 (Conn. Super. Ct. April 21, 2008): "'[A] relocation motivated by a legitimate purpose should be considered reasonable unless its purpose is shown to be substantially achievable without moving, or by moving to a

location that is substantially less disruptive of the other parent's relationship to the child.'" Tomasko, 145 N.H. at 171–72 (quoting Ireland, 717 A.2d at 682).

Father argues that while the legislature codified the same burden-shifting test used in Ireland and Tomasko in RSA 461-A:12, V-VI, it rejected the "substantially less disruptive" language of Ireland and Tomasko when it provided that RSA 461-A:12 "shall not apply if the relocation results in the residence being closer to the other parent or to any location within the child's current school district." RSA 461-A:12, I (Supp. 2019).

On the facts of this case, we need not decide whether RSA 461-A:12, I, is contrary to the "substantially less disruptive" standard or whether that standard is otherwise applicable under New Hampshire law. We need not do so because, even assuming that standard applies, we conclude that the term "substantially" denotes an order of magnitude that is not at issue here. See New Oxford American Dictionary 1736 (3d ed. 2010) (defining "substantially," in relevant part, to mean "to a great or significant extent").

The parties agree that Father's New London home is farther away from Mother's Concord residence than his Salisbury apartment. Mother testified that the New London house is twice the distance from her residence as the Salisbury apartment; however, the added distance, as found by the trial court, is only 21 miles. According to an exhibit introduced by Mother, it takes 21 minutes longer to drive from her residence to Father's New London house than to the Salisbury apartment. We conclude that, under the facts of this case — with a move less than 30 minutes and 30 miles farther from Mother's residence — the "substantially less disruptive" standard is simply not a factor in the reasonableness analysis. Any assumptions the trial court may have made about the availability of housing closer to Mother are therefore irrelevant and should not have been considered in ruling on Mother's motion for directed verdict. Having so concluded, we need not address Father's argument that the trial court's assumptions were "factually unsupported."

Based upon the evidence presented, viewed in the light most favorable to Father, and without considering whether Father's legitimate purpose was obtainable by moving to a location closer to Mother, we conclude that the trial court erred in granting a directed verdict in Mother's favor. The record contains evidence that the location Father chose was reasonable in light of his legitimate purpose. Father testified that Salisbury was "very rural" and that New London was "very similar" to Salisbury. He affirmed that he was looking for "an atmosphere that was consistent with the rural character of Salisbury" and that New London was not only similar to, but also an "improvement" on, Salisbury. He testified that at the New London house, the children could go outside to play without first having to ask for permission, which was not something they could do at their Salisbury residence where they shared a backyard with another tenant who had dogs. Little or no relevant contrary

evidence was adduced. Taking this evidence in the light most favorable to Father, and given the dearth of contrary evidence, the trial court could not have sustainably concluded that "the sole reasonable inference that may be drawn from the evidence . . . is so overwhelmingly in favor of [Mother] that no contrary verdict could stand." DeBenedetto, 153 N.H. at 812. Accordingly, we reverse the ruling directing a verdict in Mother's favor, vacate the order denying Father's relocation, and remand for further proceedings consistent with this order.

Father next argues that the trial court erred in modifying the parties' parenting time because it lacked authority to do so under either RSA 461-A:11 or RSA 461-A:12, IX. "We review both the trial court's application of the law to the facts and its statutory interpretation de novo." Sabato v. Fed. Nat'l Mortg. Ass'n, 172 N.H. 128, 131 (2019).

Father contends that the court lacked authority under RSA 461-A:11 because "neither party requested, pleaded, or proved a statutory [basis] for modification" under that section. (Bolding omitted.) We agree. "[T]o obtain a modification of a parenting schedule, a party must plead and prove one of the statutory circumstances set forth in RSA 461-A:11, I." Summers, 172 N.H. at 483. Mother concedes that she "did not file a motion to amend the parenting plan pursuant to RSA 461-A:11 because this was a relocation case and RSA 461-A:12 applies." Accordingly, the trial court did not have authority to modify the parties' parenting time under RSA 461-A:11.

Father also contends that the court lacked authority under RSA 461-A:12, IX, which provides: "If the parties agree on or the court authorizes the relocation of a residence of a child, the court may modify the allocation or schedule of parenting time or both based on a finding that the change is in the best interests of the child." RSA 461-A:12, IX (2018). Father argues that because the parties did not agree to, and the trial court denied, Father's relocation, RSA 461-A:12, IX, by its plain language, does not authorize a modification of parenting time.

Because Father's argument is premised, in part, on the court's denial of his relocation, and we have vacated that ruling, we decline to address Father's argument at this juncture. It is possible that, on remand, the trial court will grant Father's request to relocate, thus rendering the statutory authority issue moot. In addition, Mother's actions on remand could render this issue moot as well. She argues:

> Reversing the trial court's finding that it had authority to modify the parties['] parenting plan[] would result in needless litigation and a waste of judicial resources. Because the parties have already had a full and fair opportunity to be heard on their requested parenting plans, on remand [Mother] would simply have

> to consent to the relocation, since [Father] still resides in New London. By [Father's] own admission, this would create statutory grounds for the trial court to then modify the parenting plan pursuant to RSA 461-A:12, IX and order the parenting plan the court has already ruled is in the children's best interest.

Accordingly, we decline to address Father's statutory authority argument.

Finally, Father challenges the trial court's factual findings regarding: (1) the timing of an e-mail communication from Mother to Father; (2) whether Father responded to that e-mail; (3) whether Father continued the ad hoc practice of offering Mother additional parenting time; and (4) whether the parties shared residential responsibilities over the children by agreement or pursuant to an ad hoc schedule. Father argues that these findings are not supported by the record. See In the Matter of Letendre & Letendre, 149 N.H. 31, 34 (2002) ("We sustain the findings and rulings of the trial court unless they are lacking in evidential support or tainted by error of law."). Mother argues that Father "fails to articulate how these findings prejudiced his case." We need not decide whether the court erred in making these factual findings, since Father has not shown their relevance to the issues raised in this appeal or any resulting prejudice. See Giles v. Giles, 136 N.H. 540, 545 (1992) ("For an error to require reversal on appeal, it must have been prejudicial to the party claiming it." (quotation and brackets omitted)).

Reversed in part; vacated in part; and remanded.

HICKS, BASSETT, HANTZ MARCONI, and DONOVAN, JJ., concurred.

Timothy A. Gudas,
Clerk

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2016-0050, In the Matter of Edwin Potter and Melissa Turcotte, the court on November 14, 2016, issued the following order:

Having considered the briefs, memorandum of law, and oral arguments of the parties, the court concludes that a formal written opinion is unnecessary in this case. The respondent, Melissa Turcotte (mother), appeals an order of the Circuit Court (Introcaso, J.) on her motion to modify the parenting plan for her older child with the petitioner, Edwin Potter (father), and the father's petition to establish a parenting plan for the parties' younger child. On appeal, the mother contends that the trial court erred by: (1) applying the standard for modifying a parenting plan, see RSA 461-A:11 (Supp. 2015), to the establishment of an initial parenting plan for the younger child, see RSA 461-A:6 (Supp. 2015); (2) incorrectly determining the younger child's best interests; (3) denying her motion to modify the older child's existing parenting plan; and (4) ordering the father to claim the parties' older child as a dependent for federal income tax purposes. We affirm in part, vacate in part, and remand.

The relevant facts follow. The parties are the unmarried parents of two children. Their older child, born in 2011, was the subject of a 2013 parenting plan that awarded the parties "equal or approximately equal periods of residential responsibility" and joint decision-making responsibility for the child. Their younger child was born in 2014, after the effective date of the prior parenting plan. In 2015, the mother moved to modify the existing parenting plan for the older child, and the father petitioned to establish an initial parenting plan for the younger child. The mother sought primary residential responsibility and sole decision-making responsibility for both children.

Thereafter, the mother's motion to modify the older child's existing parenting plan and the father's petition to establish a new parenting plan for the younger child were consolidated, and the parties agreed that the parenting plan that would result from the trial court's decision "would cover both children."

Following a hearing on offers of proof, the trial court denied the mother's motion to modify the existing parenting plan for the older child because it could not find, by clear and convincing evidence, that the father's unsupervised parenting time with the child was detrimental to the child's physical, mental, or emotional health, such that the child's "past routine of spending considerable time with [the] father should . . . be disrupted." See RSA 461-A:11, I(c). The

court also determined that it was in the younger child's best interests to adopt a parenting plan that awarded the parents approximately equal residential responsibility and joint decision-making, "given the parties[']' past arrangement for [the younger child's] care, nurturing and support prior to the initiation of the instant litigation." The court found that the father had "significant experience" with both children and had "likely developed a significant bond with them." The court found that there was "no reasonable justification" to limit the father's parenting time to supervised visitation one day per week, as the mother had proposed.

Based upon the ordered parenting schedule, which awarded the mother four nights with the children and the father three nights with the children, and because of the parties' relative earnings, the court "issued a 'zero support' order" for the children. As part of its parenting plan decree, the court ordered the mother to claim the parties' younger child, and the father to claim the parties' older child, as a dependent for all income tax purposes. The mother unsuccessfully moved for reconsideration, and this appeal followed.

The trial court has wide discretion in matters involving parental rights and responsibilities. See In the Matter of Miller & Todd, 161 N.H. 630, 640 (2011). Our review is limited to determining whether it clearly appears that the trial court engaged in an unsustainable exercise of discretion. Id. (addressing creation of parenting plan pursuant to RSA 461-A:6); see In the Matter of Muchmore & Jaycox, 159 N.H. 470, 472 (2009) (addressing modification of parenting plan pursuant to RSA 461-A:11). This means that we review only whether the record establishes an objective basis sufficient to sustain the trial court's discretionary judgment, and that we will not disturb its determination if it could reasonably be made. Miller, 161 N.H. at 640.

I

We first address whether the trial court erred in establishing the younger child's parenting plan. In determining parental rights and responsibilities, the trial court is guided by the best interests of the child. See id. RSA 461-A:6, I, codifies factors that the trial court must consider when determining the child's best interests and allows the court to consider any other factor it deems relevant.

The mother first argues that the trial court applied the incorrect standard for establishing an initial parenting plan for the parties' younger child. The mother contends that instead of applying the "best interests" standard under RSA 461-A:6, the trial court applied the standard for modifying an existing parenting plan set forth in RSA 461-A:11, I(c). Under RSA 461-A:11, I(c), the trial court may modify an existing parenting plan if it finds "by clear and convincing evidence that the child's present environment is detrimental to the child's physical, mental, or emotional health." The mother

asserts that instead of examining the enumerated "best interests" factors in RSA 461-A:6, I, the court applied the "associated heightened burden of proof" required by RSA 461-A:11, I(c).

The interpretation of a court order is a question of law, which we review de novo. In the Matter of Sheys & Blackburn, 168 N.H. 35, 39 (2015). Based upon our review of the trial court's narrative order, we conclude that the court properly examined the enumerated "best interests" factors set forth in RSA 461-A:6, I, when establishing the initial parenting plan for the parties' younger child.

In the beginning of its narrative order, the trial court made clear that the modification of the older child's existing parenting plan is governed by RSA 461-A:11, and that the establishment of an initial parenting plan for the younger child is governed by RSA 461-A:6. In the body of the order, the trial court then applied the standard under RSA 461-A:11 when it denied the mother's motion to modify the older child's existing parenting plan and applied the standard under RSA 461-A:6 when adopting an initial parenting plan for the younger child. In assessing the younger child's "best interests," the trial court specifically examined the relevant enumerated statutory factors. For instance, the trial court found that since the younger child was born, the father cared for him and for the older child "on a regular basis." See RSA 461-A:6, I(a), (c), (f), (g). The trial court also found that the father had "significant experience" with both children and had "likely developed a significant bond with them." See RSA 461-A:6, I(a), (c). Additionally, the court found that the mother "routinely allowed both [children] to be cared for by [the father] whenever the parties were living together." See RSA 461-A:6, I (e), (f), (g). The court also examined, at length, the incidents that the mother argued made it unsafe for the children to be in the father's continued care. See RSA 461-A:6, I(b), (j), (k).

Further, the trial court found that both parties "currently reside with their own parents, and given their current work responsibilities, it is likely both will need the continued involvement of their parents for the care of [the children]." See RSA 461-A:6, I(b), (h). Given that situation, the trial court found that the parenting plan it adopted is in the younger child's best interests because "it will maximize the time [the child is] able to spend with [the] parents, rather than [the] grandparents or other caretakers." See RSA 461-A:6, I(b), (h). The court found that the parenting plan is also in the younger child's best interests "given the parties[']' past arrangement for his care, nurturing and support prior to the initiation of the instant litigation." Thus, contrary to the mother's assertions, the trial court's order demonstrates that the court considered, and applied, the relevant "best interests" factors enumerated in RSA 461-A:6, I.

The mother next argues that, had the trial court considered the statutory factors when determining the younger child's best interests, it would have reached a different result. In effect, the mother contends that the trial court improperly weighed the statutory factors, which, if properly weighed, would have resulted in her being granted primary residential responsibility and sole decision-making authority for the parties' younger child. However, it was for the trial court to weigh the "best interests" factors in the first instance. See In the Matter of Kurowski & Kurowski, 161 N.H. 578, 585 (2011). Our role on appeal is not to re-weigh the evidence, but rather to decide whether the trial court's determination "could reasonably have been made." Id. Here, we conclude that the trial court reasonably determined that the parenting plan is in the younger child's best interests.

II

We next address whether the trial court erred in denying the mother's motion to modify the older child's existing parenting plan. RSA 461-A:11 allows a trial court to modify an existing parenting plan schedule only if it finds a predicate circumstance specified in RSA 461-A:11, I. See RSA 461-A:11, II; see also Muchmore, 159 N.H. at 473. One such circumstance is "[i]f the court finds by clear and convincing evidence that the child's present environment is detrimental to the child's physical, mental, or emotional health, and the advantage to the child of modifying the order outweighs the harm likely to be caused by a change in environment." RSA 461-A:11, I(c). If the trial court finds a predicate circumstance, it may then modify the existing parenting plan, and, in so doing, must consider "only the best interests of the child as provided under RSA 461-A:6 and the safety of the parties." Muchmore, 159 N.H. at 473 (quotation omitted).

In this case, the trial court specifically stated that it did "not find, by clear and convincing evidence, that [the father's] unsupervised parenting time . . . is detrimental to" the child's "physical, mental, or emotional health, such that the [child's] past routine of spending considerable time with [the] father should . . . be disrupted." The mother argues that this trial court finding "had no objective basis in the record" because, when the record is properly viewed, it "contains clear and convincing evidence, primarily related to [the father's] drug use, that the environment created by [him] is detrimental to [the older child's] physical, mental, or emotional health." (Quotation omitted.) We disagree that the record fails to establish an objective basis sufficient to sustain the trial court's discretionary ruling. To the extent that the mother asks this court, in effect, to re-weigh the evidence, doing so is not our role on appeal. See Kurowski, 161 N.H. at 585.

The mother also argues that the trial court denied her "reasonable requests . . . that both parties take drug tests . . . and that [the father] not be granted parenting time if he failed the test." However, she does not cite, nor

are we aware of, any authority requiring the trial court to grant such a request. Instead, the trial court found that the evidence did not warrant disrupting the child's "past routine of spending considerable time with [the] father." Accordingly, we cannot conclude, as a matter of law, that the trial court unsustainably exercised its discretion by denying the mother's motion to modify the older child's existing parenting plan. See Muchmore, 159 N.H. at 472.

III

Finally, we consider the trial court's decision to order the father to claim the parties' older child as a dependent for federal income tax purposes. The mother argues that, under federal law, because the child resides with her for more nights each week than he resides with the father, the father cannot claim the child as a dependent for federal income tax purposes unless she signs a written declaration agreeing not to claim the child as a dependent on her own federal income tax return. See 26 U.S.C. § 152(e)(2) (2012). However, the trial court made no findings of fact or rulings of law regarding which parent was entitled to claim the child as a dependent under federal law, and we are unable to make such findings and rulings in the first instance on this record. Nor did the trial court order the mother to sign the written declaration she argues was required, and the mother has not challenged the trial court's authority to do so. See Dodge v. Sturdevant, 335 P.3d 510, 512 nn. 16-17 (Alaska 2014) (citing cases and describing the majority and minority rules regarding whether a state trial court has the authority to require the custodial parent to execute the required declaration). Under these circumstances, we vacate the portion of the trial court's order in which it required the father to claim the older child as a dependent for federal income tax purposes and remand for further proceedings consistent with this order.

Affirmed in part; vacated in part; and remanded.

DALIANIS, C.J., and HICKS, CONBOY, and BASSETT, JJ., concurred.

Eileen Fox,
Clerk

IN RE: Adam MUCHMORE and Amy Jaycox.

Supreme Court of New Hampshire.

IN RE: Adam MUCHMORE and Amy Jaycox.

No. 2009-312.

Decided: December 04, 2009

Decato Law Office, of Lebanon (R. Peter Decato on the brief and orally), for the petitioner. Stebbins Bradley Harvey Miller & Brooks, P.A., of Hanover (Stephen P. Girdwood on the brief and orally), for the respondent. The respondent, Amy M. Jaycox, appeals an order of the Lebanon Family Division (MacLeod, J.) modifying the parties' parenting plan. We reverse.

The record evidences the following facts. The parties are the unwed parents of a daughter, who was born in September 2006. When the child was born, both parents resided in Vermont; they now reside in New Hampshire.

In June 2007, a Vermont court entered a stipulation and order granting the respondent "primary legal and physical parental rights and responsibilities" for the child and allowing the petitioner, Adam Muchmore, regular weekly contact with the child. The stipulation and order permitted either party to petition to modify the parenting schedule when the child was between the ages of three and four.

In July 2008, when the child was not quite two years old, the petitioner petitioned the Lebanon Family Division to register the Vermont stipulation and order in New Hampshire, see RSA 458-A:15 (2004), and to modify it, see RSA 458-A: 14 (2004); RSA 461-A:11 (Supp.2008). The petitioner contended that modification was warranted because: (1) the respondent had "repeatedly, intentionally, and without justification" interfered with his parental responsibilities for the child and modification would be in the child's best interests, see RSA 461-A:11, I(b); (2) there was clear and convincing evidence that the child's present environment was harmful to her, see RSA 461-A:11, I(c); and (3) because of the respondent's conduct, the original allocation of parental rights and responsibilities was not working, see RSA 461-A:11, I(d).

The respondent objected and moved to dismiss the petition on the ground that the petitioner had failed to meet his burden of proof under RSA 461-A:11. Following an evidentiary hearing, the trial court denied the motion, ruling that while the petitioner's evidence was insufficient to carry his burden of proof under RSA 461-A:11, I(b) or (c), it was sufficient to establish that modifying the parties' parenting schedule would be in the child's best interests, and that, pursuant to RSA 461-A:4 (Supp.2008), proof that modification was in the child's best interests was all that was required. The respondent moved for reconsideration, which was denied, and this appeal followed.

We will not overturn a trial court's modification of an order regarding parenting rights and responsibilities unless it clearly appears that the court unsustainably exercised its discretion. See In the Matter of Choy & Choy, 154 N.H. 707, 711, 919 A.2d 801 (2007). Resolving the issues in this appeal requires that we engage in statutory interpretation. We review a trial court's statutory interpretation de novo. Id. We note, at the outset, that there is no choice of law issue in this case because the parties agree that New Hampshire law governs.

In matters of statutory interpretation, we are the final arbiters of the legislative intent as expressed in the words of the statute considered as a whole. In the Matter of Carr & Edmunds, 156 N.H. 498, 503-04, 938 A.2d 89 (2007). We begin our analysis by looking to the language of the statute itself. In the Matter of LaRue & Bedard, 156 N.H. 378, 380, 934 A.2d 577 (2007). When examining the language of the statute, we ascribe the plain and ordinary meaning to the words used. Id. We interpret legislative intent from the statute as written and will not consider what the legislature might have said or add language that the legislature did not see fit to include. Id. If the language is plain and unambiguous, then we need not look beyond it for further indication of legislative intent. Id. We interpret a statute in the context of the overall statutory scheme and not in isolation. In the Matter of Carr & Edmunds, 156 N.H. at 504, 938 A.2d 89. "Our goal is to apply statutes in light of the legislature's intent in enacting them and in light of the policy sought to be advanced by the entire statutory scheme." Fichtner v. Pittsley, 146 N.H. 512, 514, 774 A.2d 1239 (2001) (quotation omitted).

RSA 461-A:4, I, provides, in pertinent part:

In any proceeding to establish or modify a judgment providing for parenting time with a child, . the parents shall develop and file with the court a parenting plan to be included in the court's decree. If the parents are unable to develop a parenting plan under this section, the court may develop it.

Pursuant to its plain meaning, RSA 461-A:4, I, requires parents to submit a parenting plan to the court for inclusion in its decree. This requirement pertains both to proceedings to establish a parenting plan in the first instance and to modify an existing plan. See RSA 461-A:4, I. RSA 461-A:4, I, is silent, however, as to when a parent may seek to modify an existing parenting plan.

RSA 461-A:11 governs the circumstances under which a parent may seek modification of an existing parenting plan. RSA 461-A:11 provides: "The court may issue an order modifying a permanent order concerning parenting rights and responsibilities" once a parent has proved that any one of four circumstances exists: (1) the parents have agreed to the modification, see RSA 461-A:11, I(a); (2) one parent has repeatedly and intentionally interfered with the other parent's residential responsibilities and modifying the parents' responsibilities would be in the child's best interests, see RSA 461-A:11, I(b); (3) the court finds by clear and convincing evidence that the child's present environment is detrimental to the child and the advantage of modifying the order outweighs the harm to the child from changing her environment, see RSA 461-A:11, I(c); or (4) the parents "have substantially equal periods of residential responsibility for the child," either one parent asserts or the court finds that the original allocation is not working, and modifying the order is in the child's best interests, see RSA 461-A:11, I(d).

Only after a parent has proved that one of these circumstances exists may the court then modify the existing plan. See RSA 461-A:11. When drafting a modified parenting plan, the court must consider "only the best interests of the child as provided under RSA 461-A:6 and the safety of the parties." RSA 461-A:4, I,:6 (Supp.2008).

Here, the trial court found that the petitioner did not meet his burden of proof under RSA 461-A:11, I(b) or (c). Although the trial court did not address whether he met his burden of proof under RSA 461-A:11, I(d), the parties agree that he failed to do so. The petitioner contends that even though none of the circumstances set forth in RSA 461-A:11, I, exists, he was entitled, nonetheless, to a modification of the existing parenting plan based only upon proof that doing so was in the child's best interests. He surmises that when none of the circumstances set forth in RSA 461-A:11, I, apply, a parent may seek modification when doing so is in the

child's best interests. To support this assertion, he relies upon the reference to a proceeding to modify a parenting plan found in RSA 461-A:4, I. See RSA 461-A:4, I (requiring parents in "any proceeding to establish or modify" a parenting plan to submit such a plan to the court).

The plain language of RSA 461-A:11, I, does not support this construction. RSA 461-A:11, II requires the party seeking modification to prove that one of the four circumstances listed in RSA 461-A:11, I, exists. RSA 461-A:11, I, allows a trial court to modify an existing parenting plan under any of those circumstances. RSA 461-A:11, I, does not grant the court discretion to modify an existing plan under any other circumstances. The petitioner's assertion requires that we add language to RSA 461-A:11, I, which we cannot do. See In the Matter of LaRue & Bedard, 156 N.H. at 380, 934 A.2d 577. Had the legislature intended to permit the trial court to modify a parenting plan under circumstances other than those listed in RSA 461-A:11, it could have said so. Of course, if the legislature disagrees with our construction, it is free to amend the statute as it sees fit. See Zorn v. Demetri, 158 N.H. 437, 441, 969 A.2d 464 (2009).

RSA 461-A:11, I, simply does not allow a party to seek modification of an existing parenting plan when, as in this case, none of the circumstances listed therein exists. While this problem may regrettably prevent a trial court from reassessing the best interests of a child in circumstances where the parents are not interfering and where the child's current environment is not detrimental, it is not up to the court to solve it or to speculate as to how the legislature might choose to do so. For us to determine on review whether modification may be had under the circumstances of this case, and, if so, the burden of proof to be applied, "under our constitutional supervisory authority would in our view be an invasion of a policy area better decided by the legislature." State v. Ingerson, 130 N.H. 112, 117, 536 A.2d 161 (1987).

The petitioner argues that RSA 461-A:11 does not apply to this case because the trial court was not, in fact, modifying an existing parenting plan, but creating a new one. The Vermont order, he contends, "did not constitute a parenting plan" because it "was not comprehensive and didn't include all of the features commonly seen in a New Hampshire parenting plan." RSA 461-A:1, V (Supp.2008) defines a "[p]arenting plan" as a "written plan describing each parent's rights and responsibilities." The Vermont stipulation and decree meets this definition and was a "judgment providing for parenting time with a child" within the meaning of RSA chapter 461-A. RSA 461-A:4, I.

Moreover, pursuant to the Uniform Child Custody Jurisdiction Act, see RSA ch. 458-A (2004 & Supp.2008), the trial court was required to "recognize and enforce" the Vermont decree, RSA 458-A: 13; it could not ignore it. An out-of-state custody decree that has been filed in this state "has the same effect and shall be enforced in

like manner as a custody decree rendered by a court of this state." RSA 458-A:15, I; see RSA 461-A:20 (Supp.2008) (the word "custody" means "the allocation of parental rights and responsibilities" as provided in RSA chapter 461-A).

The petitioner also argues that RSA 461-A:11 does not apply because he merely sought a change to "visitation," and such changes, he asserts, are governed by RSA 461-A:4. The plain language of both provisions fails to support these contentions. Moreover, several provisions in RSA chapter 461-A make clear that the terms "visitation" and "custody," referring to parental rights and responsibilities, are anachronisms. The word "visitation" is used in RSA chapter 461 to refer to privileges granted to non-parents, such as stepparents and grandparents. See RSA 461-A:6, V (Supp.2008) (allowing court to grant "reasonable visitation privileges" to stepparents and grandparents when doing so is in child's best interests). The word "custody" has been replaced in RSA chapter 461-A with the phrase "parental rights and responsibilities." See RSA 461-A:20.

For all of the above reasons, therefore, we conclude that the trial court erred by modifying the parties' decree absent proof of one of the circumstances listed in RSA 461-A:11.

Reversed.

DALIANIS, J.

BRODERICK, C.J., and DUGGAN, HICKS and CONBOY, JJ., concurred.

BACK TO TOP

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THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2013-0344, In the Matter of Hunnee Mercier and Jared Stevens, the court on May 5, 2014, issued the following order:

The respondent, Jared Stevens, appeals an order of the Nashua Family Division on the petition for divorce filed by the petitioner, Hunnee Mercier. He contends that the trial court erred: (1) by finding that the petitioner's request "to relocate to Nevada was motivated by a legitimate purpose and was reasonable in light of that purpose," see RSA 461-A:12, V (Supp. 2013); (2) by finding that he failed to meet his burden of showing that the relocation was not in the child's best interests, see RSA 461-A:12, VI (Supp. 2013); (3) "as a matter of law when allowing relocation based upon its conclusion that [the respondent] could relocate as well"; and (4) "when it allowed relocation without any effort to ameliorate the impact that relocation would have by an expanded and liberal shared cost visitation schedule." We affirm.

When determining matters of child custody, a trial court's overriding concern is the best interest of the child. In the Matter of Martin & Martin, 160 N.H. 645, 647 (2010). In making this determination, the trial court has wide discretion, and we will not overturn its decision unless there has been an unsustainable exercise of discretion. Id. This means that we review the record only to determine whether it contains an objective basis sufficient to sustain the trial court's discretionary judgment. Id. The trial court's determination in any custody case depends, to a large extent, upon the firsthand assessment of the credibility of witnesses, as well as the character and temperament of the parents, and the findings of the trial court are binding upon us if supported by the evidence. Id.

RSA 461-A:12, V-VI establishes a two-part, burden-shifting test for the court to apply if a parent seeks to relocate a child's residence. Under this test, the parent petitioning for relocation must demonstrate that the relocation is for a legitimate purpose and is reasonable in light of that purpose. RSA 461-A:12, V; In the Matter of Heinrich & Curotto, 160 N.H. 650, 654 (2010). If the petitioning parent meets this burden, the opposing party then has the burden of proving that the relocation is not in the child's best interests. RSA 461-A:12, VI.

Legitimate purposes for relocation do not include interfering with the noncustodial parent's relationship with the child, but do include the pursuit of a

significant employment opportunity. Tomasko v. DuBuc, 145 N.H. 169, 171 (2000). A relocation motivated by a legitimate purpose is considered reasonable unless its purpose is substantially achievable without moving, or by moving to a location that is substantially less disruptive of the other parent's relationship to the child. Id. at 171-72.

In this case, the trial court found that

> the Petitioner has met her burden of demonstrating by a preponderance of the evidence that her relocation to Las Vegas is for a legitimate reason. She can secure employment at a much higher wage than she is making now; she would be living with or near her parents who would provide family support; and, that Las Vegas is where she grew up and has spent most of her life. The Court finds that the proposed location is reasonable in light of that purpose.

The respondent argues that the petitioner "failed to introduce sufficient evidence at trial from which the Trial Court could determine whether her employment opportunities in Nevada were 'significantly' better than those in New Hampshire." However, the petitioner testified that she had made up to $23.00 per hour with her employer in Las Vegas and had been rehired at $17.00 per hour when she returned to that employer briefly prior to her divorce. In contrast, her financial affidavit showed that, in New Hampshire, she made approximately $800.00 per month, and she testified that she worked an average of twenty-two hours per week, making her hourly wage approximately $8.50. Although the petitioner had not attempted to join a union in New Hampshire, she testified that she had tried to obtain better paying jobs here and was, in fact, working two jobs.

In addition, the record supports the trial court's findings that the petitioner would have substantial family support in Nevada, which was not available to her in New Hampshire. The record contains no evidence that her purpose in relocating to Nevada was to interfere with the respondent's relationship with the child. In fact, the guardian ad litem testified that her purpose in relocating did not have anything to do with taking the child away from the respondent. Thus, the record supports the trial court's finding that the petitioner's purposes for relocating were legitimate.

The respondent argues that the petitioner "failed to establish that relocation to Nevada was 'reasonable' in light of her relocation objectives" because the "record is devoid of any evidence that [she] must travel cross-country to Nevada in order to find employment at a rate of $17 per hour." However, the trial court explicitly found that the petitioner's legitimate purposes for relocating included obtaining family support and returning to where she "grew up and has spent most of her life." The record shows that the petitioner lived in New Hampshire for less than two years before filing for divorce and that she had

otherwise lived in Nevada. Thus, the record supports the trial court's finding that Nevada was a reasonable location in light of the petitioner's legitimate purposes in relocating.

We now address the respondent's argument that the trial court erred by finding that he failed to meet his burden to show that relocation was not in the child's best interests. See RSA 461-A, VI. When determining the best interests of the child in the context of a proposed relocation, the court considers the following factors: (1) each parent's reasons for seeking or opposing the move; (2) the quality of the relationships between the child and the custodial and noncustodial parents; (3) the impact of the move on the quantity and quality of the child's future contact with the noncustodial parent; (4) the degree to which the custodial parent's and child's life may be enhanced economically, emotionally, and educationally by the move; (5) the feasibility of preserving the relationship between the noncustodial parent and child through suitable visitation arrangements; (6) any negative impact from continued or exacerbated hostility between the custodial and noncustodial parents; and (7) the effect that the move may have on any extended family relations. Tomasko, 145 N.H. at 172.

No one of these factors is dispositive. In the Matter of Pfeuffer & Pfeuffer, 150 N.H. 257, 260 (2003). Nor are these the exclusive factors bearing upon a determination of a child's best interests. Id. We have repeatedly encouraged courts to consider additional suitable factors and to give all factors appropriate weight. Id.; Tomasko, 145 N.H. at 173. In this case, the record shows that the respondent had lived in Nevada for a number of years, had owned property there, and had family there. His New Hampshire business was in bankruptcy, and his home in this state had been foreclosed upon. Therefore, the trial court appropriately considered the respondent's ability to relocate to Nevada, if he so chose, as one among many factors in determining the child's best interests.

The respondent argues that he "met his burden of proof as the Court concurred that relocation cross country would adversely impact both the quantity and quality of his time with his minor son." It is self-evident that relocating the child to Nevada while the respondent resides in New Hampshire will affect their relationship. However, this fact alone does not determine the child's best interests. See In the Matter of Lockaby & Smith, 148 N.H. 462, 468 (2002) (reversing trial court's denial of relocation that rested solely upon enforcement of noncustodial parent's visitation rights). No single factor carries dispositive weight. Pfeuffer, 150 N.H. at 260. Although visitation by the noncustodial parent is an important right, it must yield to the greatest good of the child. Lockaby, 148 N.H. at 465.

The respondent contends that "[t]he facts in this case are remarkably similar to those in" Heinrich. However, the overriding difference between the two cases is that, in Heinrich, the trial court found that relocation would not be in

the children's best interest, Heinrich, 160 N.H at 658, while here the court concluded, after giving due weight to all the factors, that relocation is in the child's best interest. We rely upon the trial court's firsthand assessment of the credibility of witnesses and of the character and temperament of the parents. See Martin, 160 N.H. at 647. Furthermore, the family in Heinrich had resided in New Hampshire for considerably longer than the family in the case at hand and the children were integrated into the community and the schools, while the child here, who was three at the time of the hearing, is too young to have been so integrated. See Heinrich, 160 N.H. at 653.

As in Heinrich, the record here shows that the trial court considered and appropriately weighed all the relevant factors affecting the child's best interests, including the respondent's financial situation and the child's inability to use the telephone or internet unaided. See Heinrich, 160 N.H. at 656 (noting trial court considered all factors); Pfeuffer, 150 N.H. at 262 (finding trial court should weigh factors as a whole to determine whether they show relocation is in child's best interests); cf. Lockaby, 148 N.H. 468 (reversing trial court's denial of request to relocate that relied upon single factor). Although the respondent argues that "[t]he Trial Court failed to appropriately weigh the Tomasko factors in a way that focused upon the best interests of the parties' child," the court's order addresses all the factors. See Pfeuffer, 150 N.H. at 259-60 (examining whether trial court considered all factors to determine whether it appropriately balanced them). Based upon this record, we conclude that the trial court did not unsustainably exercise its discretion in finding that the petitioner met her burden to justify the relocation and the respondent failed to establish that it was not in the child's best interests. See RSA 461-A:12, V-VI.

Finally, the respondent contests the visitation schedule established by the trial court, arguing that it is not sufficient "to preserve any type of meaningful relationship with his son" and that it "places sole responsibility for visitation expenses" upon him. We are troubled by the limited provision for summer visitation. However, we recognize that the child is very young and that these provisions are subject to modification as he becomes older. See RSA 461-A:11, II (Supp. 2013); Lockaby, 148 N.H. 468 (noting extended visits over summers and school vacations conducive to maintenance of close parent-child relationship, since such extended visits give parties opportunity to interact in normalized domestic setting). We also note that the guardian ad litem expressed "concern about [the respondent's] maturity and parenting skills and does not believe that long lengthy visits between [the child] and his father are in [the child's] best interests."

The record supports the trial court's finding that the respondent has exhibited "a pattern of lying, manipulation and misrepresentation." It also shows discrepancies in the respondent's statements about his finances. On this record,

we cannot say that the trial court unsustainably exercised its discretion in establishing the visitation schedule and placing the entire cost of visitation on the respondent.

Affirmed.

CONBOY, LYNN and BASSETT, JJ., concurred.

Eileen Fox,
Clerk

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2019-0474, In the Matter of Sarah Pope and George Pope, the court on July 7, 2020, issued the following order:

The petitioner's renewal of her untimely motion for summary affirmance is denied. Having considered the briefs and record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). We affirm.

The respondent, George Pope (father), appeals the order of the Circuit Court (McIntyre, J.), following a hearing on the objection filed by the petitioner, Sarah Pope (mother), to the father's request to relocate with the parties' children to Oklahoma. The father argues that the trial court erred by failing to consider the impact of sibling separation, and that its order is contrary to the weight of the evidence.

Under RSA 461-A:12 (Supp. 2019), the parent seeking to relocate has the initial burden of demonstrating, by a preponderance of the evidence, that the relocation is for a legitimate purpose and is reasonable in light of that purpose. In the Matter of Heinrich & Curotto, 160 N.H. 650, 655 (2010). Once the parent has met this prima facie burden, the burden shifts to the other parent to prove, by a preponderance of the evidence, that relocating is not in the children's best interests. Id. We review the trial court's best interest determination under our unsustainable exercise of discretion standard. Id. Under this standard, we review only whether the record establishes an objective basis sufficient to sustain the trial court's decision. Id. Following a two-day hearing, the trial court found that, although the father's relocation was for a legitimate purpose and was reasonable in light of that purpose, relocation is not in the best interests of the children. Nevertheless, the court accepted the preference of the older children (siblings) to live with their father in Oklahoma, and only enjoined the relocation of the youngest child (child), who is now age ten.

The father first argues that the trial court "ignored the impact of sibling separation," and that by not discussing the impact of separating the child from her siblings, it failed to provide the statutory analysis required by RSA 461-A:12. At the outset, we find nothing in RSA 461-A:12 that requires the trial court to expressly evaluate the impact of sibling separation. Moreover, it is clear from the record that the court considered the impact of separating the child from her siblings. The court expressly stated that it prefers not to

separate siblings from one another. In this case, however, the court found that the child "is the youngest child and there is a significant age difference between [the child] and her siblings." The court noted that, given this age difference, the child "will never be in the same school as her siblings," and that when she is "a teen, she will be the only child in high school, with all of the other children having graduated and being of adult age." We conclude that the trial court's findings are sufficient to support its order.

The father next argues that the trial court's order is contrary to the weight of the evidence. The trial court is in the best position to determine the weight to be given to the evidence. In the Matter of Choy & Choy, 154 N.H. 707, 714 (2007). If the court's findings can reasonably be made on the evidence presented, they will stand. In the Matter of Peirano & Larsen, 155 N.H. 738, 749 (2007). In this case, the court found that it is in the child's best interest to have both parents play an important role in her life. The court found that if the child resides with her mother, she will maintain a relationship with the father, but that if she resides with the father, she may not maintain a relationship with her mother. The father argues that the court's finding is contrary to the record, which shows that the child has maintained a strong relationship with the mother despite having lived with him since the divorce. The court found, however, that the child's relationship with her mother has been under strain because the father has not been supportive of the relationship. Based upon this record, we conclude that the trial court sustainably exercised its discretion in finding that it would not be in the child's best interest to relocate to Oklahoma. See Heinrich, 160 N.H. at 658.

Affirmed.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Timothy A. Gudas,
Clerk

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2019-0636, In the Matter of Cassandra Napolitano and Aaron Napolitano, the court on September 4, 2020, issued the following order:

Having considered the briefs and record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). We vacate and remand.

The respondent, Aaron Napolitano (father), appeals orders of the Circuit Court (Lemire, J.) granting a request of the petitioner, Cassandra Schaffer f/k/a Cassandra Napolitano (mother), to relocate the parties' child to Virginia, see RSA 461-A:12 (Supp. 2019), on the basis that the father had not filed a written objection within "the 10 day responsive pleading period," and denying the father's motions for reconsideration and for late entry of his objection. The father argues in part that the trial court unsustainably exercised its discretion by denying his motions to reconsider and to allow late entry of his objection after it had treated the mother's pleading, which her counsel had expressly entitled a "petition," as a "motion," and had applied the responsive pleading deadline applicable to motions. See Fam. Div. R. 1.26(E). We agree.

RSA 461-A:12 generally prohibits a parent, at any time after a divorce or parenting petition has been filed, from relocating a residence in which a child resides at least 150 days per year unless a court order authorizes the relocation, the relocation is within the child's school district or results in the child living closer to the other parent, or the relocation is necessary to protect the safety of the child or parent. See RSA 461-A:12, I, II, II-a. The statute entitles the other parent to reasonable notice prior to the relocation and to a hearing on relocation upon request. See RSA 461-A:12, III, IV. The statute places the initial burden on the parent seeking to relocate to demonstrate that the relocation is for a legitimate purpose and that the proposed location is reasonable. See RSA 461-A:12, V. If the relocating parent satisfies that burden, the burden shifts to the other parent to prove that the proposed relocation is not in the child's best interest. See RSA 461-A:12, VI; see also In the Matter of St. Pierre & Thatcher, 172 N.H. 209, 221-22 (2019).

Family Division Rule 2.3 requires that all domestic relations matters be commenced by the filing of a "petition." Fam. Div. R. 2.3(A). The rule requires that "[t]he subject matter of the petition, such as petition for divorce, . . . be stated in the title of the petition." Fam. Div. R. 2.3(D). The rule applies not only to new domestic relations matters, but to new disputes arising between

parties following the issuance of a final decree in a domestic relations case, such as a post-divorce dispute over parenting rights and obligations. See Fam. Div. R. 2.3(I). Upon the filing of a petition by one party, the trial court is required to prepare a "Notice to Respondent" that notifies the opposing party of the petition and to attach the notice and an appearance form to the petition. See Fam. Div. R. 2.4(B). The petitioning party is then required to effectuate formal service of the notice, petition, and appearance form unless the opposing party has accepted service. See id. Once the opposing party has been served, the opposing party must file a written appearance within fifteen days of receipt of the notice in order to participate in the case, and may file a responsive pleading within the timeframe set forth in the notice. See Fam. Div. R. 2.5(A)&(B). By contrast, after a domestic relations matter has been commenced, parties may direct any request for judicial relief that may arise in that case by filing a written "motion" that certifies delivery of the motion upon the opposing party. See Fam. Div. R. 1.26(A). Any objection to a motion must be filed within ten days of when the motion was filed. See Fam. Div. R. 1.26(E).

The trial court has broad discretion to waive the strict application of any rule "[a]s good cause appears and as justice may require." Fam. Div. R. 1.2; see also Anna H. Cardone Revocable Trust v. Cardone, 160 N.H. 521, 525 (2010). "Good cause" under this rule does not bar relief from all consequences of neglect. In re D.O., 173 N.H. ___, ___ (decided February 13, 2020) (slip op. at 10-11). "Good cause is equivalent to what is 'reasonable and just.'" Id. (slip op. at 11). "In contexts other than those involving statutes of limitations, we have emphasized justice over procedural technicalities." Cardone, 160 N.H. at 525.

The record reflects that the parties are the divorced parents of a minor child born in 2013. Pursuant to their April 2016 final parenting plan, the father had parenting time every Wednesday evening and every other weekend. At a hearing on a child support dispute between the parties held on August 13, 2019, the mother's attorney hand-delivered to the father a copy of a pleading seeking to relocate the child; it was entitled, "**PETITION TO MODIFY PARENTING PLAN – RELOCATION**." The mother's counsel further mailed the pleading to the trial court on August 13 with a cover letter "[e]nclos[ing] . . . the Petitioner's Petition . . . for Relocation" for filing, and claiming that, because the matter was "currently open for a child support issue," no filing fee was due. The trial court received the pleading for filing on August 15.

In the pleading, the mother asserted that she had remarried, that her spouse had been assigned to active duty at the United States Navy base in Norfolk, Virginia, and that, although the father had initially agreed to her relocating the child to Virginia, he had since revoked his agreement. She further alleged that the father had not maintained consistent employment and was not paying child support, that she was the child's primary caregiver, that she believed the request was reasonable because she was seeking to reside

with her spouse, and that she believed the request was in the child's best interest because she had consistently provided for the child's physical and financial care. The pleading contained a certificate of service certifying that "this Motion" had been mailed to the father on August 13, 2019. By margin order dated August 27, 2019, the trial court ruled: "As no written objection has been filed by respondent (the 10 day responsive pleading period having passed), the request to relocate the child's residence is granted. A hearing to address the modified Parenting Plan shall be held . . . ."

Although the trial court's order was dated August 27, the trial court issued it by notice of decision dated September 9, 2019. On September 16, the father, without counsel, moved for reconsideration and for late entry of an objection, asserting that on receipt of the "petition for relocation," he had contacted the clerk's office and was told not to file an objection until he had been "served." The father in fact was not served with the pleading or a court notice in accordance with Family Division Rule 2.4(B). Additionally, the father filed a verified objection to the pleading in which he disputed the mother's factual allegations, asserted additional factual allegations, and argued why he believed the request for relocation was neither reasonable nor in the child's best interest. The mother objected to the motion for reconsideration, arguing in part that, because her cover letter had asserted that there was an open child support matter and that no additional filing fee was required, the father was necessarily on notice that there would be no court notice issued and no formal service of the pleading. Additionally, the mother filed a response to the father's objection in which she disputed many of the father's factual assertions and made additional factual allegations relative to the relocation request. The trial court denied the father's motions, but noted that "[i]nsofar as the objection [to the petition to relocate] contains information relevant to the development of a new Parenting Plan, it will be considered."

Thereafter, the father retained counsel who filed a successive motion for reconsideration, asserting in part that the order granting the relocation request was effectively a default judgment, that the pleading had been styled as a "petition," and not a "motion," that the father had been told by the clerk's office to respond to it on the basis of its characterization as a petition, and that the father was contesting that relocation was in the child's best interest. Under these circumstances, the father argued that it would be reasonable for the trial court to exercise its discretion and allow the father's late entry of his objection. Additionally, the father filed an affidavit asserting, under oath, that "[o]n September 11, 2019 I went to the Clerk's Office with the Petition for Relocation and the Clerk advised me to wait until I was served before filing my objection."

The trial court denied the successive motion for reconsideration "for the reasons specified in the objection." The trial court observed that: (1) the mother had alleged in the petition, under oath, that she had notified the father of her intent to relocate; (2) the mother's counsel had certified that she had

mailed the petition to the father on August 13; (3) the father did not "request a hearing to address the relocation issue when he was notified of it as he could have done pursuant to RSA 461-A:12"; (4) it was the mother "who preemptively filed a pleading seeking an order to permit the move"; and (5) the motion was in fact a motion to reconsider the denial of the prior motion for reconsideration based on the fact that the father was then self-represented, and that this fact "does not constitute good cause." This appeal followed.[1]

We review the trial court's decisions not to allow late entry of the father's objection and to deny his motions for reconsideration for unsustainable exercises of discretion. In the Matter of Geraghty & Geraghty, 169 N.H. 404, 419 (2016); R. J. Berke & Co. v. J. P. Griffin, Inc., 118 N.H. 449, 452 (1978); see also State v. Lambert, 147 N.H. 295, 296 (2001) (explaining unsustainable exercise of discretion standard). To establish that the trial court unsustainably exercised its discretion, the father must demonstrate that the trial court's ruling was clearly untenable or unreasonable to the prejudice of his case. Lambert, 147 N.H. at 296.

Under the circumstances of this case, we conclude that, even if the trial court properly treated the mother's pleading seeking relocation as a "motion," there was good cause, as a matter of law, to grant the father leave to file his objection after the deadline to object to the "motion" had passed. It was the mother's obligation under RSA 461-A:12 to obtain a court order prior to relocating the child, and not the father's obligation to request a hearing as soon as he had learned of the mother's intent to move. The mother's counsel specifically entitled her pleading, "**PETITION TO MODIFY PARENTING PLAN – RELOCATION**," and referred to it in her cover letter as her "Petition . . . for Relocation." Other than certifying that counsel had mailed "this Motion" to the father, the pleading appeared, on its face, to be precisely what the mother's counsel had called it – a petition to modify a final parenting plan so as to allow the child's relocation to Virginia. Moreover, regardless of whether, in light of the child support dispute, the mother could have filed the pleading as a "motion," the fact that she was seeking by it to amend a parenting plan that had been final for more than three years underscores the reasonableness of construing it in accordance with how the mother's counsel had designated it.

[1] We note that, although the father filed this discretionary appeal following the denial of his successive motion for reconsideration, he filed it within thirty days of the notice of decision denying his initial timely-filed motions for reconsideration and for late entry of his objection, and the trial court ruled on the merits of the successive motion for reconsideration prior to the filing of this appeal. See Sup. Ct. R. 7(1)(B)&(C) (providing that a discretionary appeal must be filed within thirty days of the notice of the decision on the merits, and that, although a successive post-decision motion will not stay the appeal period, a timely-filed post-decision motion will stay the appeal period). Accordingly, the trial court's orders granting the petition for relocation, denying the father's two motions for reconsideration, and denying his motion for late entry of his objection are each properly before us in this appeal.

Contrary to the mother's suggestion, the fact that her counsel purported to instruct the trial court in her cover letter that no filing fee was due because of the child support dispute did not put the father on reasonable notice that he should treat the "petition" as a "motion." The father could just as reasonably have anticipated from this statement that the pleading might be rejected for lack of a filing fee, see Fam. Div. R. 2.3(F), or that the trial court might find good cause to waive the filing fee, see Fam. Div. R. 1.2. Moreover, although the mother is correct that self-represented parties are bound by the same rules that govern parties represented by counsel, see In the Matter of Birmingham & Birmingham, 154 N.H. 51, 56 (2006), parties represented by counsel are generally bound by their attorneys' actions, see Paras v. Portsmouth, 115 N.H. 63, 67 (1975). Here, it was the mother's attorney who designated the pleading as a "petition," a designation with legal significance under the Family Division Rules. Regardless of whether, as the mother contends, the father understood the relief she was seeking, the form of the pleading dictated how the father was to respond. Because the mother designated the pleading as a "petition," it was reasonable for the father to understand that he was to respond in the manner prescribed by Family Division Rules 2.4 and 2.5, that is, to file an appearance and any responsive pleading after being formally served with the petition.[2]

It is clear from the father's motions for reconsideration and for late entry of his objection, including his affidavit, that he understood the pleading to be a petition governed by Family Division Rules 2.4 and 2.5. As noted above, in light of the express designation of the pleading as a petition, the father's understanding was reasonable. It is equally clear from his objection, which the trial court rejected on timeliness grounds, and from the mother's response to it that the parties disputed, for purposes of RSA 461-A:12, whether relocation was reasonable and for a legitimate purpose, and whether it was in the child's best interest. The father promptly and timely moved for reconsideration and for late entry of his objection upon the trial court's issuance of its order treating the mother's pleading as a motion and granting it on the basis that the father had not objected within ten days. Under these circumstances, there was good cause to allow late entry of the objection and to permit the father to dispute the merits of the relocation request, and we conclude that the trial court's decision to the contrary was an unsustainable exercise of discretion. See D.O., 173 N.H. at ___ (slip op. at 11). Accordingly, we vacate the trial

[2] To the extent the mother is arguing that, because she hand-delivered the pleading to the father on August 13, 2019, he had fifteen days from August 13 to file his objection under Family Division Rule 2.5(A), we note that the fifteen-day deadline under this rule applies only to the filing of an appearance after service of the petition, the Notice to Respondent, and the appearance form. The filing of a responsive pleading is governed by the timeframe set forth in the Notice to Respondent. See Fam. Div. R. 2.5(B). Nothing in the record establishes that the trial court prepared a Notice to Respondent, or that the father was served in accordance with Family Division Rule 2.4(B).

court's order granting the mother's request to relocate the child, and remand for the trial court to hold a hearing under RSA 461-A:12, IV.[3]

Vacated and remanded.

Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

Timothy A. Gudas,
Clerk

[3] To the extent that the mother is arguing that, in fact, the trial court held a post-appeal hearing at which it allegedly "reaffirmed its decision to allow [the mother] to relocate," we note that the purpose of that hearing, according to the trial court's post-hearing order, was merely "to address the modification of the parties' Parenting Plan" as a result of the relocation that the trial court had already allowed, see RSA 461-A:12, IX, a matter that the trial court deemed "collateral to the issue on appeal . . . and . . . within [its] authority [to decide] while the appeal is pending." Nothing in the record suggests that the trial court allowed the father to litigate the merits of whether the mother should be allowed to relocate the child. Indeed, the trial court specifically noted in its order that the modified parenting plan it was issuing would be temporary in light of this appeal, and that, if this court were to reverse its order granting the request to relocate the child, it would "not be bound by the Temporary Parenting Plan issued herewith when making any final decision on the issue of relocation."