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IN THE

APPELLATE COURT OF MARYLAND

ACM-REG-0424-2023

LAURENT J. LA BRIE

Appellant

v.

AURELIA LA BRIE

Appellee

Appeal from the Circuit Court for Baltimore County
(The Honorable Keith R. Truffer)

BRIEF OF APPELLANT LAURENT J. LA BRIE
&
RECORD EXTRACT

Laurent J. La Brie
11 Northwest Lane
Sunapee, NH 03782

Appellant

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STATEMENT OF THE CASE

The Parties have Minor Children, A. L. and I. L., who were both 13 years old at the time of the hearing under this appeal.

A Consent Order was filed on November 4, 2016, which said, in part,

"(1) The parties shall engage in good faith discussion with each other regarding matters of importance regarding the children, and if they still cannot reach agreement, Father shall has tiebreaker authority regarding education issues, except that, unless otherwise agreed by the parties, the children shall complete elementary school at their present elementary school and the children shall attend middle school and high school within thirty-five (35) miles of Reisterstown, Maryland, unless otherwise agreed by the parties;"

***

"(4) The parties shall continue with the same pediatrician for their children" (E.021)

The Parties were divorced on March 21, 2017 (E.028-032).

On April 10, 2019, Appellant filed a motion for change in custody (E.033-042) and a Parenting Coordinator (E.039, Para I)

A custody hearing was held on February 24-25, 2021. By agreement of the parties, the Honorable Keith Truffer (Judge) had separate conversations in chambers with the Appellant and his attorney (Carol Bell), the Appellee and her attorney (David Nowak), and William Alcarese (Best Interest Attorney, hereinafter "BIA", for the Minor Children).

As a final settlement, Appellant was given 64.3% (9 of 14 days) physical custody during the school year and 50% custody during the summer, and retained tie-breaking joint legal custody in decisions regarding health and education, while the Appellee retained tie-breaking joint legal custody in religious decisions. (E.043-48)

The hearing for child support was postponed when the Appellee reported a decrease in employment to half-time from December 2020 to August 2021from full-time in deposition on March 12, 2020. She requested an increase of $400 in monthly child support despite losing custody time. (E.049 lines 15-19)

The Appellant received a job offer in New Hampshire, (E.050 line 14) at an increase in salary which would make up for Appellee's lost income. (E.051 line 17)

On August 23, 2021, the Appellant gave the Appellee notice of intent to relocate (E.057 and R.3010 Plaintiff's Exhibit 5) and submitted his Motion to Modify Custody (E.059-070). On September 21, 2021, the Appellee filed a Motion for Status Quo (E.071-077). For two months, the Court gave no guidance on the matter and indefinitely postponed a hearing that had been scheduled for September 29, so Appellant sold his house and relocated to New Hampshire in mid-October.

On December 14, 2021, the Court held a custody hearing on the aforementioned Petitions and Motions. With the testimony of the children's therapists and BIA, the Court agreed that the Appellant's moving the children to New Hampshire was in the best interest of the children. (E078-081)

Appellant was successful in defending himself from all seven contempt

accusations from the Appellee. Most importantly to the Appellant, there was no finding of contempt over child support or denying contact between the children and the Appellee. However, the Court ruled that the Appellant was in contempt for moving to New Hampshire because the Court's decision to relocate the children to New Hampshire would require changing the Parties' custody agreement regarding pediatrician, therapists, and schooling. (E.082, lines 1-21) Although the Court didn't file a contempt order or classify the contempt, it would fit "constructive civil contempt" as defined by Maryland Rule 15-202.

The Court deliberately did not give a sanction, a purge provision or any design or request to bring the Appellant into compliance. (E.083, lines 4-14)

The Court held a hearing on March 3, 2022 (hereinafter "March Hearing") for the following purpose.

> "*THE COURT: The case is before the Court this morning on several issues. We set up the hearing to address any purge provisions and consequences resulting from the Court's finding of Mr. LaBrie in contempt of the May 14, 2021 Custody Order."* (E.085 lines 17-20)

The Court met with the attorneys for the Appellant and Appellee without the Parties being present. The Court wouldn't entertain discussion of whether or not the Appellant was in contempt.

The court did not issue a written order until 13 months later, on April 19, 2023, when the Court produced an order with a purge provision of $8,000 for the contempt. It contained no explanation of how the Appellant was in contempt, no sanction, and no

design for or request for compliance of the contemnor.

Appellant submitted a Motion to Reconsider on May 15, 2023 (E.091-E.094). The Court denied it. (E.095)

Appellant paid the sum of $8,000. (E.096-E.097)

On May 3, 2023, the Appellant timely noted his appeal to this honorable Court.

QUESTIONS PRESENTED

I. Was the Court legally correct when it held the Appellant in constructive civil contempt without producing a written order with a sanction, a purge provision, or a design for coercing future compliance when these are required under Maryland Rule 15-207(d)(2)?

II. Was the Court legally correct on December 14, 2021, when it held the Appellant in constructive civil contempt for a past action, moving to New Hampshire?

III. Can the Appellant be held in constructive civil contempt when he was not provided with the essential charges so that he would have reasonable time to prepare his defense when Maryland Rule 15-206 (c)(2) requires that contemnors be presented with the charges at least 20 days before a hearing?

IV. Was the Court legally correct on December 14, 2021, when it held the Appellant in constructive civil contempt for moving to New Hampshire when there was no clear order for him not to do so?

V. Was the Court legally correct on December 14, 2021, when it held the Appellant in constructive civil contempt without permitting him due process of law as required by the 14th Amendment of the US Constitution and when none of his actions at or before the time of the hearing were in violation of any Court Order as is required of findings of contempt by Maryland Rule 15-206?

VI. Was the Court legally correct in holding the Appellant in constructive civil contempt for relocating to New Hampshire when Maryland Statute Family Law Article §9-106 Para. (a) (4) states that "*the court shall set a hearing on the [relocation] petition on an expedited basis.*" yet it cancelled a scheduled hearing and two months passed before the Appellant relocated without the Court giving any specific guidance?

VII. Was the Court legally correct on March 3, 2022 when it imposed a purge provision, meanwhile the Court already purged the contempt three months before, by ordering the Appellant to change their school, pediatrician, and therapists and he had already fulfilled that order?

VIII. Was the Court legally correct in holding the Appellant in constructive civil contempt for putting the Court in a position that would necessitate revising an order when Maryland Statute Family Law Article §8-103 (a) authorizes and encourages the Court to change a custody agreement when it is in the best interest of the children and there exists a significant change in circumstances?

STATEMENT OF FACTS

The ruling from the bench at the hearing on December 14, 2021 was:

"Ms. LaBrie has brought it with the argument that Mr. LaBrie by moving to New Hampshire has violated the Court's order, consent order dated May 14th, 2021. And in viewing that, I have absolutely no hesitation in agreeing with that and finding Mr. LaBrie in contempt.

"I don't accept the suggestion that has been made that he thought this was consistent with the terms of the order. It's hard to view anything that was done by Mr. LaBrie as being consistent with that order.

"The order requires that the children not be taken from their therapist and as it turns out, that's exactly what has happened. The Maryland therapist cannot practice in New Hampshire. So that's out. It's unrealistic to think that the children will be coming back and forth from New Hampshire every time they need to visit a doctor. So the requirement that they stay with a doctor was ignored.[1] *The idea that the children had to stay at their current middle school and attend high school within 35 miles of Reisterstown, Maryland unless otherwise agreed was completely ignored by Mr. LaBrie."* (E.082, lines 1-21)

"So having found that and having found contempt, I am not imposing any sanctions and thus there is no purge provision." (E.083 lines 12-14)

[1] The order actually says "*The parties shall continue with the same pediatrician for their children*" (E.022 para. (4))

The Court produced no written order of contempt. The Court ruled that the Appellant would have custody of the children in New Hampshire (E.100, lines 5-8).

The Court filed an Interim Custody Access Order on December 21, 2021 which stated "*any sanction and/or purge provision are reserved until a hearing currently scheduled for February 14, 2022.*" (E.099 para. 6)

The hearing was postponed until March 3, 2022 (hereinafter "March Hearing") The Court brought the attorneys for both Parties into his chambers at 9:00 AM to make their case before him until 11:50 AM, (with two breaks for the attorneys to update their clients).

At 11:50 AM, the Court stated the purpose for the day:

> *"THE COURT: Good morning to both of you. The case is before the Court this morning on several issues. We set up the hearing to address any purge provisions and consequences resulting from the Court's finding of Mr. LaBrie in contempt of the May 14, 2021 Custody Order.*
>
> *"In addition, we had put off until today discussion of child support and adjustments of that as a consequence of the change in custody.*
>
> *"And then, finally, I will note for the record at least that it is still pending, the final custody and access Order following the children's relocation to New Hampshire. "Those are the three issues correct, counsel?*
>
> *"ATTORNEY NOWAK: Yes, Your Honor.*
>
> *"ATTORNEY BELL: Yes, Your Honor."* (E.085 line 15 – E.086 line 6)
>
> *"ATTORNEY NOWAK:*** The parties have agreed to resolve the contempt by indicating that as a purge provision Mr. LaBrie will lose one week of summer access to make up for the 10 days that Ms. LaBrie had missed under the Order because of his move to New Hampshire.*

"Mr. LaBrie also will be paying Ms. LaBrie directly $157 within 30 days of today representing the amount owed for child support arrears that he was not paying.

"Additionally, Mr. LaBrie will pay the total amount of $8,000 representing attorney's fees for the contempt directly to Ms. LaBrie for the payment plan beginning on August 15, 2020 with each payment being $1,000 due and owing on the 15th of every month thereafter.

"And, if the payment is not made, Ms. LaBrie may request and the Court will reduce the unpaid amounts to judgment in her favor.

"THE COURT: I think you said August 15, 2020. I think you 2022.

"ATTORNEY NOWAK: 2022. Yes. I apologize if I misspoke.

"THE COURT: No problem at all.

"ATTORNEY NOWAK: August 15, 2022. So there will be 8 payments of $1,000.

"THE COURT: All right.

"[ATTORNEY NOWAK:] And, Your Honor, that is the agreement that we have reached to resolve the contempt."

***

"THE COURT: And, Ms. Bell.

"ATTORNEY BELL: I just have two potential issues. One, just to clarify. It is one week of summer access for 2022 only --

"THE COURT: Correct

"ATTORNEY BELL: -- is the provision. And then I wasn't aware that the 157 in arrears was part of a purge provision for contempt.

"THE COURT: It really should go down to the child support, but --

"ATTORNEY BELL: Okay.

"THE COURT: It matters not. The money is going to be paid within 30 days until

whether I put it under the category of child support or contempt. I think it logically falls more under child support. I think that's immaterial." (E.088 line 7 – E.090 line 13)

ARGUMENT

Standard of Review

Maryland Rule 8-131(c) provides that when an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. The trial court's decision must be reversed if it was not legally correct. Appellant contends that the ruling of contempt does not follow the Court rules and case law for the following reasons and requests *de novo* review:

I. THE RULING FROM THE BENCH ON DECEMBER 14, 2021 WAS WITHOUT A SANCTION, A PURGE PROVISION OR A DESIGN FOR COERCING FUTURE COMPLIANCE;

II. APPELLANT'S RELOCATION TO NEW HAMPSHIRE WAS A PAST ACTION NOT A PRESENT STATE OF CONTEMPT;

III. APPELLANT WASN'T TOLD OF THE CHARGES UNTIL THE COURT ANNOUNCED ITS RULING INSTEAD OF 20 DAYS BEFORE IT;

IV. THERE AS NO CLEAR ORDER TELLING APPELLANT NOT TO RELOCATE TO NEW HAMPSHIRE BUT HE FOLLOWED THE REASONABLE PERSON STANDARD BEFORE DOING SO.

V. APPELLANT WAS DENIED DUE PROCESS OF LAW UNDER ARTICLE 14 OF THE UNITED STATES CONSITUTION AND NONE OF HIS ACTIONS WERE A VIOLATION OF ANY COURT ORDER;

VI. THE COURT DID NOT SCHEDULE A HEARING ON THE RELOCATION PETITION ON AN EXPEDITED BASIS;

VII. ON MARCH 3, 2022 THE COURT IMPOSED A PURGE PROVISION BUT NO SANCTION OR DESIGN FOR COERCING COMPLIANCE DESPITE THE COURT HAVING PURGED ALL CONTEMPT THREE MONTHS PRIOR; AND

VIII. **THERE WAS NO RULE, AGREEMENT, OR AUTHORITY PROHIBITING THE COURT'S CHANGING THE CUSTODY ORDER TO THE BEST INTEREST OF THE CHILDREN AND UNDER THE REASONABLE PERSON STANDARD, APPELLANT WAS FOLLOWING THE ORDERS AND GUIDANCE OF THE COURT.**

I. Maryland Rule 15-207(d)(2) provides that when the Court held the Appellant in constructive civil contempt, it must produce a written order with a sanction, a purge provision and a design for coercing future compliance.

On December 14, 2021, the Court stated "*having found contempt, I am not imposing any sanctions and thus there is no purge provision"* (E.083 line 12). Minutes later, the Court decided not to coerce the Appellant into compliance but purged the contempt condition by ordering that the Appellant should relocate the children to New Hampshire and change therapists, pediatrician, and school. Thus, the contempt had none of the three identified requirements of a ruling of contempt. An Interim Custody Access Order was filed on December 21, 2021, putting this in writing. (E.098-099)

In *Breona C. v. Rodney D*., 253 Md. App. 0299 (2021) the Court expressed in its Opinion;

> *"An order holding a person in constructive civil contempt must: (1) impose a sanction; (2) include a purge provision that gives the contemnor the opportunity to avoid the sanction by taking specific action of which the contemnor is reasonably capable; and (3) be designed to coerce the contemnors future compliance with a valid legal requirement rather than to punish the contemnor for past, completed*

conduct."

From *Id*. 67, 74:

"*A written order making a finding of civil contempt must therefore "specif[y] the sanction imposed for the contempt," and "specify how the contempt may be purged." Md. Rule 15-207(d) ; see also Fisher v. McCrary Crescent City, LLC , 186 Md. App. 86, 120, 972 A.2d 954 (2009) ("Following a finding of contempt, the court must issue a written order specifying (1) the coercive sanction imposed for the contempt, and (2) how the contempt may be purged.").*"

From *Bryant v. Social Services*, 387 Md. 30, 46 (Md. 2005):

"*[A] penalty for civil contempt, if it is to be coercive rather than punitive, must provide for purging; it must permit the defendant to avoid the penalty by some specific conduct that is within the defendant's ability to perform.*"

From *State v. Roll and Scholl, 267 Md. 714, 728 (Md. 1973), Jones v. Wright*, 35 Md. App. 313, 316 (Md. Ct. Spec. App. 1977), *Middleton v. Middleton,* 329 Md. App. 627 (1993), Lynch *v. Lynch*, 342 Md. 509, 519 (Md. 1996), *Dodson v. Dodson , 380 Md. 438, 448, 845 A.2d 1194 (2004)*, Bahena *v. Foster*, 164 Md. App. 275, 286 (Md. Ct. Spec. App. 2005):

"*A civil contempt proceeding is intended to preserve and enforce the rights of private parties to a suit and to compel obedience to orders and decrees primarily made to benefit such parties. These proceedings are generally remedial in nature and are intended to coerce future compliance. Thus, a penalty in a civil contempt must provide for purging.*"

Thus, the Court was not legally correct when it held the Appellant in constructive civil contempt and did not produce a written order with a sanction, a purge provision, or a design for coercing future compliance.

II. Maryland Rule 15-207(d)(2) provides that when the Court holds a contemnor in constructive civil contempt, it must coerce future compliance, not punish

past action, i.e., the Appellant's moving to New Hampshire.

Breona C. v. Rodney D., 0299 (2021), the Court expressed in its Opinion;

*"An order holding a person in constructive civil contempt must: (1) *** (2) *** and (3) be designed to coerce the contemnors future compliance with a valid legal requirement rather than to punish the contemnor for past, completed conduct."*

"The coercive mechanism of an order of constructive civil contempt is the imposition of a sanction that the contemnor is able to avoid by taking some definite, specified action of which the contemnor is reasonably capable."

From *Bryant v. Social Services*, 387 Md. 30, 46 (Md. 2005):

"*[A] penalty for civil contempt, if it is to be coercive rather than punitive, must provide for purging; it must permit the defendant to avoid the penalty by some specific conduct that is within the defendant's ability to perform.*"

The Court did not order the Appellant to return from New Hampshire. Instead, the Court found that it was in the children's best interest to relocate them to New Hampshire with him and to find therapists, a pediatrician, and a school in New Hampshire.

"*On the other hand, the penalty imposed in a criminal contempt is punishment for past misconduct which may not necessarily be capable of remedy. Therefore, such a penalty does not require a purging provision but may be purely punitive.*" *State v. Roll and Scholl*, 267 Md. 714, 728 (Md. 1973)

More clarity from *State v. Roll and Scholl*, 267 Md. 714, 729 (Md. 1973):

'*If the punishment is coercive and the contemnors carry "the keys of their prison in their own pockets" it is civil but if the sanction is to punish it is criminal. Shillitani v. United States, supra*.'

From *Breona C. v. Rodney D.*, 253 Md. App. 67, 73-74 (Md. Ct. Spec. App. 2021):
'"[T]he purpose of civil contempt is to coerce present or future compliance with a court order, whereas imposing a sanction for past misconduct is the function of criminal contempt." Dodson v. Dodson , 380 Md. 438, 448, 845 A.2d 1194 (2004) ("[T]he law concerning contempt is clear, and [ ] the purpose of civil contempt is to coerce present or future compliance with a court order, whereas

imposing a sanction for past misconduct is the function of criminal contempt.").'

In re Nevitt, 117 F. 448, 461 (C.A.8th Cir. 1902), civil contempt "*is essentially a civil remedy designed for the benefit of other parties and has quite properly been exercised for centuries to secure compliance with judicial decrees.*"

Thus, the Court was not legally correct on December 14, 2021, when it held the Appellant in constructive civil contempt for a past action, the Appellant's moving to New Hampshire.

III. Maryland Rule 15-206 (c)(2) requires that a contemnor be presented the charges at least 20 days before the hearing.

From *State v. Roll and Scholl, 267 Md. 714, (Md. 1973)* pp. 731-732

> *"Under Maryland Rule P4, An Alleged Contemnor Proceeded Against For Constructive Contempt Is Entitled To Receive Service Of A Show Cause Order Issued By The Court Stating The Time And Place Of Hearing, Allowing A Reasonable Time For The Preparation Of The Defense, And The Essential Facts Constituting The Contempt Charged*."

Neither the Appellee nor the Court informed the Appellant prior to the Hearing that he was being accused of contempt for the act of relocating to New Hampshire, nor because his relocating required the court to make changes in the court order regarding pediatrician, therapists, and school. Rather, these accusations were created by the Court

after all testimony had been completed. [2, 3]

The Appellee never claimed that the act of the Appellant moving violated the Court's order, not even in her section "***CHANGE OF RESIDENTIAL ADDRESS***" of the Amended Petition for Contempt which absolved him of such contempt.

> "*52. The Consent Order dated October 21, 2016 requires that "each of the parties shall keep the other party informed of a change with respect to their residential address."*
>
> ***
>
> *"55. Although **the Plaintiff notified** Ms. LaBrie of a change in address…"* (E.110-111)

Furthermore, instead of proposing the Appellant was in contempt, Appellee's attorney said in the hearing that the Appellant's relocation is "up to him", "fine", and his "Constitutional right".

> *MR. NOWAK: "We didn't think he was actually going to take the children to New Hampshire. But if he goes, that's up to him. Where the children go, that is not."* (E.115 lines 16-18)

> *"There was no expectation that he was actually going to be taking the children. Whether he goes is fine."* (E.116, lines 20-22)

[2] Appellee's Amended Petition for Contempt (E.106, para. 25) stated, "Additionally, the minor children's therapists cannot engage in telehealth appointments with the minor children while they are located outside of Maryland." However, that was clearly referring to their time before moving to New Hampshire, since they would not use telehealth in New Hampshire with a therapist in New Hampshire. Nothing precluded them from engaging in therapy when they were in Maryland and thus fulfilling the Order.

[3] The Appellee didn't mention these in the Petition for Contempt of September 21 (R.2570) or Amended Petition for Contempt of November 12 (E.101) and in a separate motion the same day, she requested the Court issue an order not to change therapists or pediatrician (E.075 para. E.).

"But now if he had moved, fine." (E.117, line 23)

"So his moving to earn more income is fine. He has a [C]onstitutional right to do that." (E.118 line 8)

Thus, the Court was not legally correct on December 14, 2021 when it held the Appellant in constructive civil contempt when the Appellant hadn't been given the required 20 days' notice of the charges against him, depriving him of his opportunity to defend himself.

IV. According to Maryland Rule 15-206, for a finding of contempt, there must be a violation of a clear order requiring the other party to do something.

The Court stated, "*Mr. LaBrie by moving to New Hampshire has violated the Court's order, consent order dated May 14th, 2021."* (E.082, line 2)

The order does not address the matter of relocation.[4] and nowhere did the Appellee claim that Appellant moving to New Hampshire violated the consent order. Thus, the Appellant retains his Constitutional right to relocate (as explained by the Appellee's).

Thus, the Court was not legally correct on December 14, 2021, when it held the Appellant in constructive civil contempt "by moving to New Hampshire."

V. Maryland Rule 15-206 says: "*(b) Who May Initiate: (2) Any party to an **action** in which an alleged contempt occurred.*" (Emphasis added.) The reasons that

[4] The Appellant had informed the Appellee on January 12, 2020 of his first job offer there, (E.119 Plaintiff's Exhibit 4 R.3009. See also E.120 line 6) but Appellee did not insert any prohibition against relocation in the next settlement order. On February 25, 2021, the Court held many hours of meetings and negotiations off the record and not in the presence of the Appellant where she could have discussed this with the Court.

the Court gave for Appellant's relocation to New Hampshire being contempt was not based on an action of the Appellant but on the future that the Court saw was in the best interest of the girls.

The Court ruled:

> "*The order requires that the children not be taken from their therapist and as it turns out, that's exactly what has happened. The Maryland therapist cannot practice in New Hampshire."* (E.082 line 12)

This is not due to an action of the Appellant but a law in New Hampshire.

There is no such order requiring "*that the children not be taken from their therapist*". In fact, the order gives the Appellant the authority regarding change in therapists and gives a procedure for changing therapists.

> "*The minor children shall continue therapy with their current therapists, *** If in the future, there is a need to **change a therapist**, the parties shall jointly discuss the selection of the therapist, but Father shall have tie-breaking authority*" (E.046, para. 9, emphasis added)

The May 14, 2021 order was the first custody order after the Appellee had "fired" one therapist (E.055, line 6) and had conflicts with another. (See letter (E.129) filed on July 28, 2020 with the Appellant's successful motion for a BIA (E.121 -128) as Exhibit 3). The provision in this order supported the Appellant's request to reinforce his decision that the therapists not be fired by the Appelleee at that time.

The Court heard testimony that the Appellant had not changed A. L.'s therapist and that she could continue depending on the Court's decision.

> *MR. NOWAK: So, if [A. L.] was living primarily in Maryland, she could continue seeing you, right?*

> *[THERAPIST]: If scheduling permitted and she was predominantly living in Maryland, yes.* (E.130 line 6, see errata page E.131.)

Later, the Court seemed to determine that it, not the Appellant, would be deciding whether the therapist continues treating the child:

> *THE COURT: Given the fact **if** [A. L.] is in New Hampshire, you will not be able to continue therapy with her, how do you believe she would, she's likely to react to that, changing therapists, a very close intimate relationship?* (E.135, lines 1-4)

It wasn't an action of the Appellant that meant that the child would start with a new therapist. It was an action of the Court. Furthermore, the therapist was supportive of the change for the sake of less conflict in the child's life. (In the therapist's letter, (E.129) she threatened to stop treating the child if the conflict between the Appellee and the therapist didn't end.)

The other therapist said that the Appellee had already "fired" her, (E.055, line 6) so it was an action of the Appellee, not the Appellant, that was in contempt.

The Court ruled "*It's unrealistic to think that the children will be coming back and forth from New Hampshire every time they need to visit a doctor."* (E.082, line 14)

Relocating the girls to New Hampshire was not an action of the Appellant but an action of the Court.

Besides, the Court Order states, "*The parties shall continue with the same* ***pediatrician*** *for the children.*" (E.022, para. (4) and E.047, para. 10 d., emphasis added) There is no requirement in any order for the children to be treated by doctors only in Maryland.

Moreover, the Appellee proposed a solution to preclude the Court's from a ruling of contempt. "*Well, Ms. LaBrie could get insurance for the children, correct? That's not an issue.*" (E.136, line 15)

In addition, there is no order that they see their pediatrician "*every time they need to visit a doctor*". Thus, this contempt is based not on an action of the Appellant but on what the Court considers "realistic" in the future after **the Court's action** moving the children to New Hampshire.

Besides, children rarely see their pediatrician outside of their wellness visit. Sick children usually go to health clinics which are more convenient and less expensive. Thus, it **is** realistic for the Appellee to take the children to the pediatrician once or twice during the 100 days throughout the year they are with her. However, the Appellant was unable to address this issue because he had not been informed of this contempt accusation prior to the Hearing.

Nevertheless, at the Hearing, there was no question about it and there was no testimony about it.[5] When the topic came up, the BIA's objection was sustained.

> *"[Mr. Nowak:] Well, Ms. LaBrie wanted that provision in there, right?*
>
> *"MR. ALCARESE: Objection, getting into settlement discussions and the purposes of language that was included in the court order.*

[5] The provisions regarding the school and pediatrician were part of the original custody order filed November 4, 2016 (E.021, para. (1)). At the Hearing of February 25, 2020 the Appellant requested all the legal custody provisions be included in the May order, as the Court said, "*For purposes of completeness*" and **not** as a renewal of an agreement between the parties. (E.138, lines 3-14)

"THE COURT: Okay. Sustained." (E.137 lines 11-16.)

Consequently, the Appellant was convicted without due process of law.

Another basis of contempt was:

"The idea that the children had to stay at their current middle school and attend high school within 35 miles of Reisterstown, Maryland unless otherwise agreed was completely ignored by Mr. LaBrie". (E.082, lines 17-21)

The Appellee's lawyer testified that they were still enrolled in Baltimore County Public Schools and attending there.

MR. NOWAK: So the children today, Your Honor, are in their seats in their Baltimore County [P]ublic [S]chools. They are here. Mr. LaBrie brought them back. Ms. LaBrie took them back to their schools and they were there yesterday and they are there today.

THE COURT: This is at Franklin Middle?

MR. NOWAK: And Deer Park Middle.

THE COURT: Okay.

MR. NOWAK: But they are both in school.

THE COURT: That's right. (E.139, line 14 -E.140, line 3)

*MR. NOWAK: **[T]he Baltimore County school system has not transferred the transcript*** (E.140 line 20)

So, the Appellant had not removed them from their middle school. This contempt is not based on an action of the Appellant but the *idea* that the Court has for their future after it acts on the motions.

Regardless, the Court did not advise the Appellant what the charges would be and did not allow him to testify in his defense. It is unlawful for a Court to hold a citizen in

contempt without due process of law as required by the 14th Amendment of the US Constitution and for an action of the Court or the Appellee.

VI. Although the Appellant's reporting requirement did not fall under the Maryland Statute Family Law Article §9-106 (a)(4), on August 23, 2021 he notified the Court of his intent to relocate to New Hampshire (E.061 para. "17."). Two weeks later, the Appellant still had not heard from the Court regarding scheduling an expedited hearing.

On September 8, 2021, Appellant gently prodded the Court by submitting a Motion to consolidate the anticipated custody hearing with the hearing scheduled for September 29, 2021, (E.141-145) and informed the Court of his job's starting date, October 5, 2021. (E.142 para. 10) Dartmouth Hitchcock and he had set the start date after September 29, 2021, allowing the Court to use the hearing to provide any indication of disapproval or guidance before he left his employer, Johns Hopkins Hospital.

The reasonable person standard would mean that the Court knew that a relocation to New Hampshire would require a modification to physical custody and possibly legal custody due to the distance from Maryland, since the order divided the school week between the parents. Applying that standard also meant that the Court knew that by not giving guidance before the Appellant's job began, it was deciding that it was in the best interest of the children for the Appellant to relocate to New Hampshire.

If the Court wanted to preserve these orders and prevent the actions it later

considered to be contempt, it could have used the hearing of September 29, 2021 to guide the Parties.

The Court's reply was filed on September 14, 2021, as an Order to postpone the hearing set for September 29, 2021 indefinitely, (E146) i.e., to a date after the Appellant reported to work in New Hampshire. Thus, the Court *de facto* decided that the custody order would be modified, a decision it later declared was contempt on the part of the Appellant.

So, the Court was not legally correct in holding the Appellant in constructive civil contempt when the Court didn't follow Maryland Statute Family Law Article §9-106 (a)(4) to set a hearing on an expedited basis, but instead canceled a hearing which had already been scheduled with both Parties.

VII. On March 3, 2022 the Court held a hearing about a monetary purge provision for a ruling that the Appellant was in contempt for moving to New Hampshire and necessitating a change to the court order to change the Minor Children's school, pediatrician, and therapists.

As discussed previously, Maryland Rule 15-207(d)(2) provides that when the Court holds a contemnor in constructive civil contempt, it must coerce future compliance, not punish past action.

When the Court ruled that the children were to move to New Hampshire (E.100, line 5) and transfer to new a new school, pediatrician, and therapists, the Court's

accusations of contempt had already been purged. The Court made no new allegations of contempt at the March Hearing and the Appellant was in full compliance.

The Minor Children had started their new school in December, 2021, and with their new pediatrician on February 8, 2022.

Minor Child A. L. had started therapy with Doris Kendall in March 2022.[6]

Appellant's Attorney insisted in the Appellant's innocence and attempted to convince the Court that the Appellant should be awarded attorney's fees. While the Court wouldn't entertain discussion of the legality of the contempt, his attorney got caught up in a hearing lasting several hours over the amount of the purge provision. Appellant decided not to get involved in a hearing over the purge provision when he was deprived due process of law in the first hearing. So, it was recorded that the Appellant would pay $8,000 to purge the contempt.

The written order assessing the $8,000 purge provision was not issued until April 19, 2023. At that time, the contempt had been purged by the Court 13 (thirteen) months before.

Thus, the Court was not legally correct on March 3, 2022 when it imposed a purge provision, since the Court had effectively purged the contempt by ordering the Appellant to relocate the children to New Hampshire and to transfer to new a new school,

[6] Minor Child I. L.'s resumption of therapy was delayed beyond March, at least partly due to the Court having to intervene and issue an order on March 2, 2022 giving the Appellant full authority to choose the therapist due to the Appellee's disrupting the selection process. (Motion E.147-154 and Order E.155)

pediatrician, and therapists, and this was accomplished.

VIII The Court ruled that the Appellant was in contempt because his actions required the Court to modify an order as if child custody were a binding contract between the Parties that the Court isn't authorized to modify. Yet Maryland Rules authorizes changes, Maryland case law supports changes, and the Court ordered the Parties to "*advance the interests of the Minor Children."* (E.185 para. 3)

Maryland Statute Family Law Article §8-103 (a) says:

> **"***The court may modify any provision of a deed,* ***agreement, or settlement*** *with respect to the care, custody, education, or support of any minor child of the spouses, if the modification would be in the best interests of the child.*" (Emphasis added)

Appellee's attorney stated,

> *MR. NOWAK: *** "The parties agreed to share physical custody and legal custody and if there is going to be is a change in circumstance,* ***Your Honor can modify that as well****."* (E.118 line 22, emphasis added)

Legal custody regarding residency, secondary school plans and pediatrician had not changed since the Custody Settlement of October 21, 2016. At that time, the Minor Children were only beginning third grade.

In the ensuing five years, the children became teenagers, and significant changes occurred in the community (the court mentioned the differences in COVID restrictions between the two states that remained 10 months after the last hearing (E.051 lines 11-13)).

Regardless of whether the time since the last change is 61 months or 3 months,

there is no Court Rule, law, nor agreement between the parties that requires a waiting period from a previous order before a party is permitted to significantly advance the interests of the children and request a modification. Furthermore, the Court Order of July 16, 2021 ordered the parties to "*advance the interests of the Minor Children"* (E.185 para. 3)

In *Schaefer v. Cusack* 124 Md. App. 307 (1998), the Court recognized that the best interest of the child changes over time. It advised against Court Orders attempting to look into the future and remaining static, and advised in favor of orders that change in response to a child's best interest, specifically citing changes in residence as an example.

> "*the best interest of the child can be determined better at the time a relocation is proposed than in an attempt to look into the future and to say now that the best interest of the child requires a present determination that a separation of the parents by more than forty-five miles would have an adverse effect upon the child.*" *Id* at 307

> *In re the Marriage of Bard,* 603 S.W.2d 108, 109 (Mo.App. 1980) the Court ruled,

> "*In our highly mobile society it would be unrealistic to inflexibly confine a custodial parent to a fixed geographical area if removal to another jurisdiction was consistent with the best interests of the minor child.*" *Kline v. Kline*, 686 S.W.2d 13, 17 (Mo. Ct. App. 1985) and *Galeener v. Black*, 606 S.W.2d 245, 251 (Mo. Ct. App. 1980) also quote *In re the Marriage of Bard,* 603 S.W.2d 108, 109 (Mo.App. 1980) .

Of special concern to the Court in the instant case was the impact of the conflict between the parents on the children's mental health.

> THE COURT: "*You are fighting fights that you started ten years ago. *** and it can only injure, and I use the term, injure, your daughters. The longer it goes on, the more it happens, they feel it. ***that is very much at the heart of the problems that have brought the parties into court here."* (E.156, line 20 – E.157, line 8)

Thus, the Parties had been in the same harmful conflict in 2011, three years before the divorce in December 2014.

Hoping to end the conflict and litigation, the Appellant submitted motions to appoint mediators (a Parenting Coordinator on June 13, 2018 (E.158-161) and April 10, 2019 (E.039, Request I.) and a BIA on July 11, 2019 (E.162-167) and July 28, 2020 (E.121-129)). All the while that the Appellee was advocating joint custody, she was opposing all efforts to make it successful, including opposing a Parenting Coordinator (E.177-179) and BIA. The Court denied all these requests until the BIA was appointed on January 5, 2021 (E.168-170).

The therapists tried to resolve the conflict and the Appellee had conflicts with them. (E.055, line 6; E.056, line 13-25) So, a therapist recommended, "*If you do not have a mediator, I recommend the use of one*" (E.129 penultimate paragraph, Enclosure 3 to the May 24, 2021 BIA request).

Then, at the Hearing of December 2021, Appellant's Attorney brought up the parenting coordinator request several times, even suggesting the BIA for the job.

> *MS. BELL: [The proposed custody schedule] "also requires some cooperation as the girl's schedule increases, it may not be able to set the date and say, every third weekend, it may have to be –*
>
> *THE COURT: Who determines that?*
>
> *MS. BELL: Well, gosh, if only we could have a parenting coordinator and that was heard in my client's testimony he wished that. I don't know if we can engage Mr. Alcarese for the rest of his life."* (E.171, lines 11-19)

Instead of treating the request for the BIA to serve as a Parenting Coordinator as a serious request, the Court joked about the conflict. "*THE COURT: Because it strikes me as an exception maybe about as big as New Hampshire itself.*" (E.171, line 20)

Ms. Bell returned to the subject:

> "*Again unless there is some man in the middle that is able to make that decision [about cooperation over the girls' schedule] and I am sure the Court doesn't want to be that decision maker –*
>
> *"THE COURT: You are exactly right on that."* (E.172 line 3)

When Ms. Bell made an extended pitch for a therapist as mediator, the Court responded with a dismissive "*Thank you, Ms. Bell.*" (E.172, line 19)[7]

The clear message from the Court was that it wanted the conflict to end because it was injuring the children. The Court understandably doesn't want to oversee coparenting, but it also refused to appoint a mediator.

At the February 25, 2021 hearing, the BIA expressed that the children wanted less time with their Mother than they would be getting from the settlement that became the May 2021 order. (E.173 lines 2-5) So the situation was tenuous.

By Maryland case law, parents incapable of communicating and reaching shared decisions, as in the instant case, are poor candidates for joint legal or physical custody.

> ***"Capacity of the Parents to Communicate and to Reach Shared Decisions Affecting the Child's Welfare.*** *This is clearly the most important factor in the determination of whether an award of joint legal custody is appropriate, and is relevant as well to a consideration of shared physical custody. Rarely, if ever, should joint legal custody be awarded in the absence of a record of mature*

[7] In contrast, the Appellee made no proposal for an external mediator to bring compromise.

conduct on the part of the parents evidencing an ability to effectively communicate with each other concerning the best interest of the child, and then only when it is possible to make a finding of a strong potential for such conduct in the future." *Taylor v. Taylor*, 306 Md. 290, 304 (Md. 1986)

***

"*In the unusual case where the trial judge concludes that joint legal custody is appropriate notwithstanding the absence of a "track record" of willingness and ability on the part of the parents to cooperate in making decisions dealing with the child's welfare, the trial judge must articulate fully the reasons that support that conclusion.*

*"*Willingness of Parents to Share Custody. *Generally, the parents should be willing to undertake joint custody or it should not be ordered.*" *Id. at* 307

Taylor v. Taylor at 305 cites *Kline v. Kline*, 686 S.W.2d 13, 16 (Mo.App. 1984) where the Missouri Appeals Court implemented sole custody over joint custody noting that *'the potential for cooperation in joint decision making was far outweighed by evidence of power struggles and hostility" between the parents'*.

Taylor also cited *Turner v. Turner*, 455 So.2d 1374, 1380 (La. 1984)" which replaced joint custody with sole custody because the "*parties [were] unable to settle their differences amicably, or to insulate the children from their battles.*" (*Taylor op cit.* at 306)

Taylor also cited *Heard v. Heard*, 353 N.W.2d 157, 161-62 (Minn. App. 1984) where the Court of Appeals of Minnesota

'*found that the trial judge erred in awarding joint legal custody and divided physical custody when testimony at trial "revealed two people who were unable to communicate and whose negotiations even on such matters as telephone calls by the children sometimes resulted in abusive behavior."'* (*Taylor op. cit.* at 306)

"A second important factor to consider in determining whether joint physical care is in the child's best interest is the ability of spouses to communicate and show

mutual respect. Hynick, 727 N.W.2d at 580; Ellis, 705 N.W.2d at 101; ; Iowa Code § 598.41(3)(c)" In re Marriage of Hansen, 733 N.W.2d 683, 698 (Iowa 2007)

"Third, the degree of conflict between parents is an important factor in determining whether joint physical care is appropriate. Joint physical care requires substantial and regular interaction between divorced parents on a myriad of issues. Where the parties' marriage is stormy and has a history of charge and countercharge, the likelihood that joint physical care will provide a workable arrangement diminishes." In re Marriage of Hansen, 733 N.W.2d 683, 698 (Iowa 2007)

Seldom does the history of charge and countercharge reach the level this case does. By the Appellee's calculation, this case had cost the Appellant "200 thousand dollars."[8] (E.175, line 22). The conflict was only costing the Appellant one third the rate due to the Baltimore County Lawyer Referral Service Reduced Fee Family Law Program. (E.176, para. 2, submitted with his Motion on October 21, 2022) So, the reasonable person would make this custody situation a prime candidate for sole physical and legal custody.

"In short, a stormy marriage and divorce presents a significant risk factor that must be considered in determining whether joint physical care is in the best interest of the children. The prospect for successful joint physical care is reduced when there is a bitter parental relationship and one party objects to the shared arrangement."Melchiori v. Kooi, 644 N.W. 2d 365, 368 (Iowa Ct. App. 2002) *Burkhart v. Burkhart*, 876 S.W.2d 675, 680 (Mo.Ct.App. 1994)

"The preference for joint custody as stated in section 452.375 "`is not that of a forced joint custody in order to induce the parents to find a common ground.'. . . Rather, it is a preference `in favor of parents who show the willingness and ability to share the rights and responsibilities of child-rearing even after they have dissolved the marriage.'" In re Marriage of Johnson, 865 S.W.2d 417 (Mo. Ct. App.

[8] The actual figure is considerably higher, but we will accept this for the sake of this argument.

1993) *(quoting Margolin v. Margolin, 796 S.W.2d 38, 49 (Mo.App. 1990)).”* *Burkhart v. Burkhart*, 876 S.W.2d 675, 680 (Mo.Ct.App. 1994)

Beck v. Beck, 86 N.J. 480, 432 A.2d 63, 71-72 499 (1981) stated that one criterion in deciding whether joint custody is appropriate is that *“the judge need only determine if the parents can separate and put aside any conflicts between them to cooperate for the benefit of their child.”*

In *Mastropole v. Mastropole,*181 N.J.Super. 130, 436 A.2d 955, 959-60 (1981) the court reversed an award of joint custody because the standards of *Beck* had not been met. Also the evidence showed the parents were "*unable to isolate their personal conflicts from their roles as parents.*"

In the instant case, the BIA testified, *“Communication clearly is a problem between the two of those people and I think we also saw it today through Ms. LaBrie’s testimony.”* (E.056 line 7)

And the Court testified,*“The ability of the parents to co-parent is a significant question. Communication is very difficult.”* (E.174 line 23)

In Massman v. Massman, 749 S.W.2d 717, 720 (Mo. Ct. App. 1988), the Court stated, *‘The best interests of the child are not served by a court directing or ordering "cooperation" and "communication" and "joint decision-making."’*

“*The court's consideration of N.J.S.A. 9:2–4 factors should include relevant factors concerning …and evidence of parental non-cooperation, see Beck, supra, 86 N.J. at 499, 432 A.2d 63.* ” *R.K. v. F.K.*, 96 A.3d 291, 297 (App. Div. 2014)

So, the Appellant was acting in the children's best interest when the move to New Hampshire would finally put the custody decision in the Court's hands.

The fruitless efforts to maintain joint custody while replacing conflict with peace financially devastated the Appellant. All that remained in his bank account was $43,000 from selling his house which the Appellee's attorney argued be diverted to himself instead of towards buying the replacement home for the children in New Hampshire. (E.139, lines 3-13) Meanwhile, the Appellant had given the Appellee a $400,000 house, mortgage free.

Thus, the Appellee had managed to drain all the Appellant's liquid assets and by avoiding working full-time,[9] she was attempting to justify her request for an increase in child support while Appellant's salary in Maryland wasn't increasing with the increase in costs from more custody. The situation was untenable.

Sunk in unending Court conflict that was injuring his children and destroying their financial future, the Appellant decided that if another offer of employment with a higher salary came from Dartmouth Hospital, he would accept. Relocating the children to New Hampshire also would provide the children with a better education and more extracurricular opportunities, (E.052 line 20 – E.054 line 14) more consistent therapy, (E055, line 6) and desired physical distance from conflict with and around the Appellee.

[9] Mr. Nowak's testimony that the time of her working part-time being during COVID (E.051, line 24) was disingenuous. The period of negotiating child support was after the hearing of February 25, 2021, the best job market in decades as people returned to life as normal without returning to work. The Appellant received his job offer during that time.

(E.056, lines 15-24)

Then, on June 9, 2021, the Appellee escalated conflict with a Motion to Enforce Consent Order (E.180-184) to try to prevent the children from going to Scout summer camp because part was during her custody time. Without a hearing, the Court

> "*ORDERED, that both parties shall abide by the terms of their Consent Order and shall conduct themselves so as to advance the interests of the Minor Children; and it is further*
>
> *"ORDERED, that All other relief requested in the Defendant's Motion to Enforce is DENIED*." (E.185 para. 3-4)

"Advance" is an active verb. The Court wanted the parties to be proactive instead of reactive while staying within the confines of the written Court orders.

The Appellant believes that a reasonable person would understand that the Court supported his relocation when;

1.) the Court replied within seven days of Appellant's Motion to Consolidate (E.141-145) with an Order on September 14, 2021, to postpone the hearing set for September 29, 2021 indefinitely, (R.2513 E.146.) i.e., to a date after the Appellant reported to work in New Hampshire; and

2.) the Appellee received no response to her Motion for Immediate Appropriate Relief, filed on September 21, 2021, meaning she was denied her requested relief, including that the Court "*[i]ssue an Order that the Plaintiff is prohibited and enjoined from removing the minor children from the State of Maryland pending further order of this court;*" (E.075 para. D.) So, while the

Court responded favorably in seven days to Appellant's request to consolidate a hearing, it did not respond to the Appellee's Motion to enjoin until the hearing, three months later.

The Appellant reasoned that the Court was wisely facilitating a more educated long-term decision, as it would know at the hearing how the children were adjusting to New Hampshire.

The children, the therapists and the BIA favored the relocation. (E.186, line 17-24) Relocation would reduce conflict.

Thus, the Court was not legally correct in holding the Appellant in constructive civil contempt for putting the Court in a position that would necessitate a modification of the order about schooling, therapists, and pediatrician when

1.) Maryland Statute Family Law Article §8-103 (a) clearly authorizes and encourages the Court to modify a custody agreement when it is in the best interest of the children and a significant change in circumstances exists

2.) Maryland case law advises against future-looking orders and against joint custody when at least one party refuses to co-parent and

3.) The signals from the Court would indicate to the reasonable person that it was approving the relocation.

CONCLUSION

For the above reasons and authorities stated, the Appellant respectfully requests that the

Court:

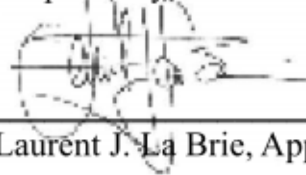
1. REVERSE the ruling of contempt against the Appellant.

2. ORDER that the Defendant return the $8,000 to the Appellant.

3. ORDER that the Appellant be returned 10 days of supplemental summer custody.

4. GRANT such further relief as this Court deems appropriate.

Respectfully Submitted,



Laurent J. La Brie, Appellant

Statement as to Typeface: The font used in this Brief is Serif and the type size is 13 point except for footnotes which are 11 point.

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 9027 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
2. This brief complies with the requirements stated in Rule 8-112.

TEXT OF CITED STATUTES & RULES

Fourteenth Amendment of the Constitution of the United States

Section 1 *** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Maryland Statute Family Law Article §8-103

(a) The court may modify any provision of a deed, agreement, or settlement with

respect to the care, custody, education, or support of any minor child of the spouses, if the modification would be in the best interests of the child.

Maryland Statute Family Law Article §9-106

(a) (4) If either party files a petition regarding a proposed relocation within 20 days of the written notice of the relocation required by paragraph (1) of this subsection, the court shall set a hearing on the petition on an expedited basis.

Maryland Rule 8-131 - Scope of Review

(c)Action Tried Without a Jury. When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

Maryland Rule 15-202 – Definitions

(a) Constructive Contempt. "Constructive contempt" means any contempt other than a direct contempt.
(b) Direct Contempt. "Direct contempt" means a contempt committed in the presence of the judge presiding in court or so near to the judge as to interrupt the court's proceedings.

Maryland Rule 15-206 – Constructive Civil Contempt

(b) Who May Initiate:
(2) Any party to an action in which an alleged contempt occurred and, upon request by the court, the Attorney General, may initiate a proceeding for constructive civil contempt by filing a petition with the court against which the contempt was allegedly committed.

(c) Content of Order or Petition
(2) Unless the court finds that a petition for contempt is frivolous on its face, the court shall enter an order providing for (i) a prehearing conference, or (ii) a hearing, or (iii) both. The scheduled hearing date shall allow a reasonable time for the preparation of a defense and may not be less than 20 days after the prehearing conference.

Maryland Rule 15-207 – Constructive Contempt; Further Proceedings

(d) Disposition--Generally.

(2)*Order*: When a court or jury makes a finding of contempt, the court shall issue a written order that specifies the sanction imposed for the contempt. In the case of a civil contempt, the order shall specify how the contempt may be purged. In the case of a criminal contempt, if the sanction is incarceration, the order shall specify a determinate term and any condition under which the sanction may be suspended, modified, revoked, or terminated.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _9th___ day of August, 2023, two copies of the foregoing Brief of Laurent J. La Brie, the Appellant, were mailed, postage pre-paid to: Aurelia La Brie, Appellee, 21 E. Cherry Hill Road, Reisterstown, MD 21136

Laurent J. La Brie