

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

NOVEMBER TERM

2022 SESSION

In the Matter of Alexandra Rourke and Sean Rourke

2022-0304

**RULE 7 DISCRETIONARY APPEAL FROM THE
10th Circuit –Family Division - Portsmouth**

**BRIEF OF APPELLANT
Alexandra Gamble (formerly Rourke)**

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Other

RSA 461-A:11 *Passim*

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.

Part, I, Article 15 of the N.H. Constitution 14,16,24

[Art.] 15. [Right of Accused.] No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself. Every subject shall have a right to produce all proofs that may be favorable to himself; to meet the witnesses against him face to face, and to be fully heard in his defense, by himself, and counsel. No subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land; provided that, in any proceeding to commit a person acquitted of a criminal charge by reason of insanity, due process shall require that clear and convincing evidence that the person is potentially dangerous to himself or to others and that the person suffers from a mental disorder must be established. Every person held to answer in any crime or offense punishable by deprivation of liberty shall have the right to counsel at the expense of the state if need is shown; this right he is at liberty to waive, but only after the matter has been thoroughly explained by the court.

U.S.C.A. Const. Amend. XIV

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. 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.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the

United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Family Court Erred When It Modified the Parties' Parenting Plan Based Upon RSA 461-A:11(b) and (h) As Neither Ground Was Pled By Father and Mother Was Not Given Notice Or An Opportunity To Present Evidence On These Additional Grounds.
(Preserved in Petitioner's May 19, 2022 Motion to Reconsider, Addendum ("Add") at 56-59)

2. The Parties Did Not Request Changes And Did Not Have Notice Or An Opportunity To Be Heard On Changes To The Parent Plan Beyond The Routine Schedule.
(Preserved in Petitioner's May 19, 2022 Motion to Reconsider, Add. at 54-55)

3. Respondent Did Not Meet His Burden For Modification Of A Final Parenting Plan Under RSA 461-A:11.
(Preserved in Petitioner's May 19, 2022 Motion to Reconsider, Add. at 51-53)

STATEMENT OF CASE AND FACTS

This appeal arises out of the Family Court's May 2022 modification of the parties' Parenting plan based on statutory factors in RSA 461-A:11 father did not plead and *sua sponte* modification of provisions neither party requested. (Add. 29-40).

The parties have three children and were divorced on September 13, 2019. The parties Parenting Plan was approved and incorporated into their Final Decree. That Plan stated the parties intended to exercise a flexible schedule based on the father's time in the Seacoast and in Costa Rica. If the parties were unable to agree on a schedule, they agreed to the following schedule(s) for visitation in New Hampshire:

During months that the respondent [Father] is in the NH Seacoast Area: at least one weeknight dinner/after school visit per week, and at least two weekends per month. These weekend visits shall include overnights if he has lodging/living arrangements that allow for overnight visits with his children. If he does not have lodging/living arrangements that allow for overnights with the children, he shall be entitled to spend the hours between 9Am and 6 Pm on Saturday and Sunday with the children during his weekends. If the parties cannot agree on weekends, Sean shall be entitled to the first and third weekend of each month. Sean shall provide Alexandria travel dates with as much notice as possible, but at least 14 days. (Add. 90-91).

The Parenting plan also provided visitation rights in Costa Rica as follows:

It is anticipated that Alexandra will travel to Costa Rica somewhat frequently. During these times, the parties agree that they will develop a flexible parenting schedule. In the event they are not able to agree on a parenting schedule in Costa Rica or times for the children to be in Costa Rica, Sean shall be entitled to a minimum of three non-consecutive weeks with the children in Costa Rica, to be exercised during school vacation months. This three weeks will be in addition to the time he will spend with his children in the NH Seacoast area.

(Add. 92).

On April 20, 2021, Father (Respondent) filed a Petition to Modify the parties' Parenting plan based on RSA 461-A:11 (d) and (g). (Motion, ¶ 21-22)(Add. 70). Pursuant to RSA 461-A:11 (d) the Family Court may modify a parenting plan:

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." N.H. Rev. Stat. Ann. § 461-A:11.

Pursuant to RSA 461-A:11 (g) the Family Court may modify a parenting plan:

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.

On March 24, 2022, the Court held a three-hour final hearing on the merits of father's Motion. On May 4, 2022, the Family Court (Pendleton, J.) modified the Parenting Plan pursuant to RSA 461-A: 11 (g), (b) and (h). (Add. 35-36). Father's Petition to Modify did not assert RSA 461-A:11(b) or (h) as grounds. (Add. 70). The Court also modified provisions within the Parenting Plan that were not included in the Petition to Modify. (Add. 41-48).

In its Order finding that RSA 461-A:11(g) applied, the Family Court relied upon language within the Parenting Plan that stated Father was living primarily in Costa Rica and now lives on the N.H. Seacoast. (Add. 35). The Court did not reference those portions of the Plan that contained a visitation schedule for Father in both N.H. and Costa Rica. The Court also failed to address Father's testimony that he never relocated to Costa Rica, as he wanted to live in close proximity to his children and continued to live in NH at the time the Parenting Plan was executed. (T-13).

The Family Court issued its Order modifying the Parenting Plan on May 4, 2022. (Add. 28). Mother filed a Motion to Reconsider with a Motion to allow late entry on May 19,

2022. (Add. 51-60). Mother filed her Notice of Appeal with this Court on June 1, 2022. The Family Court granted the Motion to allow late entry and denied the Motion to Reconsider on June 17, 2022. (Add. 49).

SUMMARY OF ARGUMENT

The Legislature has limited the circumstances under which the Family Court may modify a Parenting Plan. *See* RSA 461-A:11. By statute, the court may modify a Parenting Plan only if it finds that one of the specifically enumerated factors in RSA 461-A:11 applies and in most instances, it must find modification would be in the child's best interests.

Father moved to modify the parties' 2019 Parenting Plan alleging the parties enjoyed substantially equal periods of residential responsibility and the original allocation was not working. RSA 461-A:11(d)(Petitioner's Motion, ¶21, Add. 70). The Family Court rejected this assertion because mother has the children 2/3 of the time and father has them 1/3, not 50%. (Add. 36).

Father also sought modification based on RSA 461-A:11, I(g) which permits modification "if one's parent's allocation of parenting time was based in whole or in part on the travel time between the parties' residence 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." (Petitioner's Motion, ¶22, Add. 70). The Family Court modified the parties Plan based upon statutory factor (g) because the Parenting Plan envisioned father would be living primarily in Costa Rica, even though he never moved to Costa Rica. (Add. 35). The Parenting Plan included visitation schedules for both Costa Rica and New Hampshire. Consequently, the Plan should not have been modified based upon a change in residency when the Plan recognized the possibility of alternative residences.

The Court's application of RSA 461-a:11(I)(g) as its authority to modify the Parenting Plan was also legally flawed as father never relocated to Costa Rica. At the time the Parenting Plan was executed, and at the time of trial, father was living in N.H.

The Court committed further error when it referenced and relied upon unpled statutory factors in RSA 461-A:11 to modify the Parenting Plan. RSA 461-A:11(b) and (h). Mother was not provided meaningful notice of the Court's decision to consider statutory factors that were not in father's Petition. The Court violated Petitioner's procedural due process rights when it granted modification based upon statutory grounds that were not pled and of which mother had no advance notice.

The Trial Court made the same error when it *sua sponte* made other changes to the parties' Parenting Plan that were never pled and of which mother had no advance notice. This Court has repeatedly held that parties must be provided "meaningful notice" of the issues to be adjudicated in advance of trial. Mother was not notified of the Trial Court's intent to make other changes to the parties' Parenting Plan until after evidence had closed and the Court issued its Final Order. The Trial Court's actions failed to provide mother meaningful notice.

STANDARD OF REVIEW

This Court has de novo review of the Family Court's decision to modify the parties' Parenting Plan pursuant to statutory grounds in RSA 461-A:11 (b) and (h) that were not pled by Father and not properly noticed. *Douglas v. Douglas*, 143 N.H. 419 (1999); *Duclos v. Duclos*, 134 N.H. 42 (1991); *City of Claremont v. Truell*, 126 N.H. 30 (1985). This Court has de novo review of the Family Court's decision to *sua sponte* modify other provisions on the parties' parenting plan that were not pled or requested by either party. *Id.* Finally, this Court has de novo review as to the meaning of RSA 461-A:11(g) and whether the Family Court erred when it found this statutory factor had been met even

though the parents' residences had not changed and the Plan expressly addressed visitation for two separate locations. *In re Muchmore*, 159 N.H. 470 (2009).

ARGUMENT

I. The Family Court Erred When It Modified The Parties Parenting Plan Based Upon RSA 461-A:11 (b) and (h) As Neither Ground Was Pled By Father And Mother Was Not Given Notice Or An Opportunity To Present Evidence On These Additional Grounds.

Absent an agreement of the parties, the trial court may modify a permanent parenting schedule only if it finds the moving party has pled and established one of eight enumerated grounds in RSA 461-A:11 and in most cases the Court must also find that modification is in the best interest of the child. *In re Muchmore*, 159 N.H. 470 (2009). The burden of proof is on the moving party. RSA 461-A:11, III. This Court, when interpreting RSA 461-A:11 has held that “to 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.” *In re Summers & Summers*, 172 N.H. 474, 483 (2019)(emphasis added).

Father's Petition to Modify plead two grounds under RSA 461-A:11, I. First, Father alleged that he and Petitioner “enjoyed substantially equal periods of residential responsibility for the children” and that schedule was no longer in the children's best interest. (Add.70, ¶ 21); See, RSA 461-A:11, I(d).¹ Second, Father alleged that “one parent's allocation of parenting time was based in whole or in part on travel time between the parents' residences at the time of the order and the parents are now living . . . closer to each other.”(Add. 70, ¶ 22); See, RSA 461-A:11, I(g).

¹ The Trial Court agreed that RSA 461-A:11, I (d) probably did not apply as the Parenting Plan did not afford the parents equal parenting time. (Add. 36).

Father's Petition to Modify did not raise any other provision of RSA 461-A:11 as a basis to modify the Parenting Plan. Father did not plead the "repeated, intentional, and unwarranted interference by a parent with the residential responsibilities of the other parent" provision pursuant to RSA 461-A:11, I(b), nor that "one parent's allocation or schedule of parenting time was based in whole or in part on his or her work schedule," pursuant to RSA 461-A:11, I(h).

Although Father did not plead RSA 461-A:11 (b) as a ground for modification, the Family Court found "the lack of detail in the current Parenting Plan leaves the Petitioner subject to RSA 461-A:11(b) challenges relating to claims of 'repeated , intentional, and unwarranted interference by a parent with the residential responsibilities of the other parent.'" (Add. 35). The Court further found a "more detailed Parenting Plan will help the Parties avoid similar circumstances in the future." (Add. 36). The Court committed legal error when it relied upon statutory factor (b) as Father did not plead that factor in his Petition, and Mother had no advance notice that she would need to present evidence to address this factor.

Similarly, the Court erred when it found "an argument could be made that the Respondent father was going to be working in Costa Rica primarily, but is now working in the Seacoast area. See RSA 461-A:11 (h)." (Add. 36). The Court acknowledged, "This was not an argument raised by Respondent mother directly but facts were elicited to cause the Court to consider its application." (Id.). Contrary to the Court's finding—its action on the Respondent's Motion to Modify should have been restricted to the factors actually pled, (d) and (g) only.

Without notice that the Court would modify the parties Parenting Plan based on unpled provisions of RSA 461-A:11, Mother was denied the opportunity to present evidence and argument as to those issues. Specifically, that: the allocation and/or schedule of parenting time in the final Parenting Plan was not based on either party's employment; and Mother

followed the Parenting Plan that both parties agreed to and the Court approved. In doing so, Mother did not impose limitations on Father's parenting time nor interfere with Father's residential responsibilities simply because the parties disagreed about the parenting schedule and how much time each parent spent with the children. (See Motion to Reconsider, Add. 54-55).

The State Constitution provides that "no person shall be deprived of his life, liberty or property except in accordance with the 'law of the land.' N.H. CONST. pt. I, art. 15. '[L]aw of the land' means due process of law. *Appeal of Portsmouth Trust Co.*, 120 N.H. 753, 756, 423 A.2d 603, 605 (1980)." *Petition of Bagley*, 128 N.H. 275, 285 (1986). This Court employs a two-part analysis to determine whether particular procedures satisfy due process. "First it must be determined that the challenged procedures concern a legally protected interest. Second, it must be determined whether the procedures afford the appropriate procedural safeguards." *Id.*

In this case, the challenged procedures concern Mother's visitation rights. This Court has "long recognized the right to raise and care for one's children as a fundamental liberty interest protected by Part I, Article 2 of the New Hampshire Constitution. See *State v. Robert H.*, 118 N.H. 713, 716, 393 A.2d 1387, 1389 (1978), *disavowed on other grounds by In re Tricia H.*, 126 N.H. 418, 424, 493 A.2d 1146, 1151 (1985)." *In re Kerry D.*, 144 N.H. 146, 149 (1999). Consequently, Mother was entitled to procedural due process in the context of the underlying Motion to modify and restrict her visitation rights with her children.

Pursuant to Part I, Article 15 of the N.H. Constitution "an elementary and fundamental requirement of due process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. *City of Claremont v. Truell*, 126 N.H. 30, 35, 489 A.2d 581, 585 (1985).... In the divorce context, notice to the parties must give the defendant actual

notice of the hearing and the issues to be addressed. *See Duclos v. Duclos*, 134 N.H. 42, 44–45 (1991).” *Douglas v. Douglas*, 143 N.H. 419, 423 (1999).

In the *Truell* case, this Court discussed the requirement of timely notice as notice that provides the parties with “the opportunity to have a hearing on the government’s action at a *meaningful time*.” 126 N.H. at 38 (quoting *Petition of Clark*, 122 N.H. 888, 891 (1982)(emphasis in original). This Court recognized that the determination whether notice is timely will vary from case to case, we are persuaded that “[i]f the right to notice ... is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented.” *Fuentes v. Shevin*, 407 U.S. 67, 81, 92 S.Ct. 1983, 1994, 32 L.Ed.2d 556 (1972); *Vermont Nat’l Bank v. Taylor*, 122 N.H. 442, 446, 445 A.2d 1122, 1125 (1982). Otherwise, the right to notice is meaningless. *See Petition of Clark*, 122 N.H. 888, 891–92, 451 A.2d 1303, 1305 (1982).” *Truell*, 126 N.H. at 38.

The Truells contested their obligation to reimburse the City for costs incurred to house their stepdaughter who was determined to be a child in need of services under RSA 169-D. The City filed suit seeking \$4,924.96 in costs. The Truells were not notified of their potential financial obligation when the CHINS petition was filed; rather they were informed after the costs had been incurred. This Court concluded it was “fundamentally *unfair* for parents not to be afforded actual notice that proceedings under RSA chapter 169-D (Supp. 1983) may affect their property interests.” *Truell*, 126 N.H. at 37 (emphasis in original). This Court reversed the judgement in favor of the City as the Truells “did not receive notice of their liability under RSA chapter 169–D (Supp.1983) *until* the towns sought reimbursement and writs of summons were issued. This deprived them of the opportunity to be heard on the expenses to be incurred in the dispositions. The notice therefore was untimely and, thus, the defendants are not subject to liability for expenses incurred under former RSA 169–D:29 (Supp.1981).” *Truell*, 126 N.H. at 39–40.

Likewise, in *Duclos v. Duclos*, 134 N.H. 42 (1991) this Court concluded that Mrs. Duclos did not receive adequate notice that the scheduled “default hearing” would address all of the outstanding issues in her divorce and thus, this Court vacated the order addressing property distribution, alimony and child support. Similarly in *Morphy v. Morphy*, 112 N.H. 507 (1972) this Court vacated a support order extension when the defendant had no notice the support order extension would be heard at the contempt hearing. In that case, the moving party failed to raise the support renewal issue in its contempt petition. Thus, defendant was “justifiably unprepared to meet the issue when raised at the hearing.” *Morphy*, 112 N.H. at 510.

Finally in *Douglas v. Douglas*, 143 N.H. 419 (1999) this Court found the Court’s trial notice and subsequent hearing which the defendant did not attend should have been restricted to the entry of a default judgment and not a disposition of the marital estate. The defendant asserted the Court’s failure to hold a separate hearing violated her constitutional rights. This Court decided the issue as a matter of common law, and did not reach her constitutional claim, though it vacated the distribution order because the Court had not provided the defendant with adequate notice. *See White v. Town of Wolfeboro*, 131 N.H. 1, 3 (1988) (constitutional issues will be reached only when necessary). *Douglas*, 143 N.H. 419, 425–26 (1999).

“[N]otice and an opportunity to be heard are basic essentials of a judicial proceeding” (quotation omitted); *cf. Boddie v. Connecticut*, 401 U.S. 371, 376–79, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) (given the fundamental importance of marriage and divorce, due process considerations regarding notice and the opportunity to be heard are implicated). This Court traditionally analyzes due process claims under the New Hampshire Constitution, *see State v. Ball*, 124 N.H. 226, 231, 471 A.2d 347, 350–51 (1983), relying on cases interpreting the Federal Constitution only to aid its analysis. *See Dime Savings Bank of New York v. Town of Pembroke*, 142 N.H. 235, 236, 698 A.2d 539, 540 (1997). Under both Part I, Article 15 of the New Hampshire Constitution and the Fourteenth

Amendment of the Federal Constitution, “an elementary and fundamental requirement of due process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *City of Claremont v. Truell*, 126 N.H. 30, 35, 489 A.2d 581, 585 (1985) (brackets, quotations, and ellipses omitted).

In the divorce context, notice to the parties must give the defendant actual notice of the hearing and the issues to be addressed. *See Duclos v. Duclos*, 134 N.H. 42, 44–45, 587 A.2d 612, 614 (1991). In this case, Mother had no notice the Court might modify the parties’ Parenting Plan under RSA 461-A:11(b) and (h) as Father relied exclusively on factors (d) and (g). (Add. 70). Regardless of the arguments or evidence raised at trial, Mother was entitled to notice at a “meaningful time” that these factors would be relied upon by the Court in its decision. Notice at a “meaningful time” as interpreted by this Court would be notice in advance of the hearing, so that Mother would be prepared to enter evidence to address the unpled statutory grounds. The Family Court’s decision to modify the parenting plan based upon RSA 461-A:11(b) and (h) should be vacated, as these grounds were not pled by Father, thus depriving Mother of notice at a “meaningful time.” *City of Claremont v. Truell*, 126 N.H. 30, 35 (1985).

II. Father Did Not Meet His Burden To Modify the Final Parenting Plan Under RSA 461-A:11(g) Based Upon a Change in Residency as The Parenting Plan Envisioned He Might Reside in N.H. and/or Costa Rica and It Provided Visitation for Both Locations.

The Trial Court modified the Parties Parenting Plan because it found under RSA 461-A:11 (I)(g) the Plan was based on the assumption Father would be living in Costa Rica not New Hampshire. (Add. 35). Contrary to this finding, the Parenting plan provided visitation rights in both N.H and Costa Rica as follows:

During months that the respondent is in the NH Seacoast Area: at least one weeknight dinner/after school visit per week, and at least two weekends per month. These weekend visits shall include overnights if he has lodging/living

arrangements that allow for overnight visits with his children. If he does not have lodging/living arrangements that allow for overnights with the children, he shall be entitled to spend the hours between 9Am and 6 Pm on Saturday and Sunday with the children during his weekends. If the parties cannot agree on weekends, Sean shall be entitled to the first and third weekend of each month. Sean shall provide Alexandria travel dates with as much notice as possible, but at least 14 days. (Add. 91-92).

In the event they are not able to agree on a parenting schedule in Costa Rica or times for the children to be in Costa Rica, Sean shall be entitled to a minimum of three non-consecutive weeks with the children in Costa Rica, to be exercised during school vacation months. This three weeks will be in addition to the time he will spend with his children in the NH Seacoast area. (Add. 92).

The parties' testimony confirmed that when the original Parenting Plan and Addendum was signed Father was living in New Hampshire-not Costa Rica. (T-13). Father also testified that "at the time of the signing of the Parenting Plan, [he] had no interest in moving back to Costa Rica because the kids had divulged interest in staying here. The children are here, this is where [he] will be." (T-13:16-19). Although there was discussion of Father returning to Costa Rica at the time the Parenting Plan was being drafted, he testified that living in Costa Rica "did not seem viable for a lifestyle [he] could sustain." (T-14:15-16)

Father made the decision not to move to Costa Rica because "the thought of being away from [the children] for that amount of time. [He] knew [he] could have a life in Costa Rica but it wouldn't be any life that [he] would want without the children." (T-17:17-22). When asked when he decided not to return to Costa Rica, Respondent replied that "it was pretty much immediate;" he got a job and a winter rental, and "that ended any thought of living in Costa Rica." (T-15:1-7).

When asked about his parenting time after he decided not to relocate to Costa Rica, Father testified "immediately upon . . . finalization of divorce, [he] was still living at a

friend[‘s] house . . . things were as they were per the parenting plan” because he needed to secure legitimate housing. (T-15:25-16:1-8). Father further testified that at the time he and Petitioner drafted and signed the Parenting Plan, they expected to live in close proximity to one another and their intent was to live in close proximity to one another. (T-46:9-18).

When the parties were drafting their Parenting Plan Father also knew Petitioner would be renting a place and living with the children in Kittery Maine. Father’s goal at that time was to live in close proximity to Petitioner, to be close the children. (T-47-48). At the time of signing the final Decree, Father planned to stay in the Seacoast area to be close to his children. (T-47-48). Father did not move back to Costa Rica but stayed in the Seacoast area to be close to the children. (T-49:1-10).

Because Father’s residence was still in N.H. when the Parenting Plan was executed and the plan specifically addressed a visitation schedule for NH and Costa Rica, it was legal error for the Court to rely upon statutory factor (g) as grounds to modify the Plan. Factor (g) is available to modify a Parenting Plan only when the allocation of parenting time “was based in whole or in part om 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 form each other by such distance that the existing order is not in the child’s best interest.” As reflected by the trial testimony when the Parenting Plan was signed and at the time of modification, both parents were living in New England within short commuting distance of one another and they continue to live in New England within short commuting distance of one another. (T-12-15; 105-109). Consequently RSA 461-A:11(g) does not apply.

This Court recognized *In re Muchmore*, 159 N.H. 479, 474 (2009) the Family Court does not have the statutory power to modify a Parenting Plan unless the moving party establishes that one of the statutory factors within RSA 461-A:11 have been met. “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).” 159 N.H. at 474.

The Family Court erred when it relied upon RSA 461-A:11(g) as the statutory authorization underlying its modification of the Parenting Plan. That statutory factor authorizes a modification when the original Parenting Plan has made no allocation for the parents to be living in more than one location by authorizing modification when one parent relocates. That is not the circumstance that faced these parties. The Parenting Plan adopted by these parties specifically contemplated and provided visitation rights for Father in both N.H. and Costa Rica. Because the Parenting Plan itself contemplated visitation that might at times be exercised from Costa Rica and/or the NH Seacoast—RSA 461-A:11(g) does not apply.

The Family Court’s modification order overlooked or misapprehended the terms in the Parenting Plan that included a specific schedule for Father’s parenting time while living on the Seacoast. In fact, the parties informed their co-parent counselor that the addendum to their final Parenting Plan included a schedule for Respondent’s parenting time should he decide to permanently reside in the area, as he ultimately did and/or should he decide to later relocate to Costa Rica, which he did not. (Petitioner’s Exhibit 1, Add. 77-78). Finally, the Court’s modification order based on RSA 461-A:11(g) ignores Father’s testimony that he never relocated to Costa Rica at any time relevant to the parties agreed

upon Parenting Plan. Father's decision to not relocate, precludes him from seeking modification based upon a relocation that did not occur.

III. The Family Court Erred When it Made Additional Changes to The Parties Parenting Plan That Were Not in Father's Petition to Modify as Mother Was Not Provided Meaningful Notice of Any Such Changes.

The Court's decision to modify other provisions within the Parenting Plan *sua sponte* when such changes were not requested² or pled by either party conflicts with basic procedural due process. *Douglas v. Douglas*, 143 N.H. 419, 423, (1999).

As noted earlier in this brief, Father sought modification of the Parenting Plan to obtain "equal of substantially equal parenting time with the minor children." (Add. 70, ¶ 20). Father requested no other changes. Mother's Answer requested no other changes. (Add. 65-66). Consequently, Mother reasonably anticipated the final hearing would be limited to Father's request for equal time pursuant to the two statutory grounds pled, RSA 461-A:11 (d) and (g). (Add. 70, ¶ 21-22).

The Final Hearing addressed whether Father had demonstrated a basis for the Court to modify a permanent order concerning parental rights and responsibilities under RSA 461-A:11. In addressing modification to the Parenting Plan the Court and parties focused solely on the routine schedule. Although the Court granted the parties additional time following the Final Order to agree to an alternative Parenting Plan, Respondent declined to do so. (Motion to Reconsider, Add. 56-57, ¶ 32).

² Although Petitioner included an amendment to the Vacation Schedule in her Proposed Order, this was done under the mistaken belief that the parties had reached an agreement to amend that paragraph. Neither party had included amendments to the Vacation Schedule in pleadings and no evidence on that issue was presented during the hearing. Petitioner's proposed language was limited: "In the event of a conflict with vacation dates, Sean's preference will control in odd years and Alexandra's preference will control in even years. The parties shall inform one another if there is a conflict no later than 14 days following notice of a vacation, otherwise any conflict is waived." (See Motion to Reconsider, Add. 56).

The Court *sua sponte* modified the following provisions of the Parenting Plan without notice or opportunity to the parties as follows:

- a. Decision-Making Responsibility
 - i. The following provision was included by agreement of the parties in the final Parenting Plan, but omitted from the newest order: “Should a disagreement arise regarding the children’s medical treatment including, [sic] the parents shall follow the recommendation of the children’s treating pediatrician.”

If the omission of this language had been properly pled in Father’s Motion to Modify, Petitioner would have presented evidence and testimony regarding the basis for and necessity of including this language, in order to resolve potential conflict over medical treatment of a child. (See Motion to Reconsider, Add. 58).

The Court *sua sponte* further modified the Parenting Plan without notice or opportunity to the parties as follows:

- b. Holiday or Special Occasion
 - i. The following provision was included by agreement of the parties in the final Parenting Plan but omitted from the newest order:
 1. New Year’s Day, 10 a.m. to 5:30 p.m. Even years with Alexandra, odd years with Sean.
 - ii. The parties agreed in the final Parenting Plan that the children would spend each parent’s birthday with that parent, from 10 am or after school until 7:30 p.m. However, the newest order changed the end time to 9 p.m.
- c. Vacation Schedule
 - i. The parties agreed to the following for Vacation Schedule in the original plan: “The parties will work together toward a mutually beneficial agreed vacation schedule that allows each parent to have a reasonable share of vacation time with the children. The vacation schedule agreement supersedes the routine schedule but not the holiday schedule. Each parent shall provide the other parent with an itinerary/travel information, location and telephone numbers for emergency purposes when traveling with the children.

(See Motion for Reconsideration, Add. 57-58).

The *sua sponte* modifications made by the Court, which neither party requested limits the vacation time of each parent, absent agreement, to 10 days in the summer and either February or April school vacation. This is a significant departure from what the parties intended in their agreed upon final Parenting Plan. If Mother had notice and opportunity to be heard regarding vacation, she would have presented evidence and testimony regarding plans already made for summer 2022, her family traditions, her understanding of typical deadlines for camp registration and vacation planning timeframes, as well as proposals related to the parties notifying one another of vacation or travel plans. Additionally, given the ordered change to the routine schedule, Petitioner would have presented argument regarding the three-day weekend schedule. (See Motion to Reconsider, Add. 58).

Following receipt of the *sua sponte* changes, Mother filed a Motion to Reconsider challenging the changes. (Add. 51-60). The Court denied the Motion stating it “disagrees with the assertion that the parties were not on notice of changes made to the schedule, given the Petitioner’s own proposals and arguments made during the hearing.” (Add. 50). In its Order denying reconsideration, the Family Court denies its Order went beyond the pleadings based on “Petitioner’s own proposals and arguments made during the hearing.” (Add. 50).

Any arguments addressing unpled changes to the Parental Rights Schedule made *during the final hearing* would not have provided “meaningful notice” notice to the parties. As this Court has previously recognized, notice of the issues being adjudicated must be provided in advance. Without advance notice of the issues being adjudicated the parties cannot possible be prepared with witnesses and evidence to address unpled and unknown issues. *Douglas v. Douglas*, 143 N.H. 419 (1999); *Duclos v. Duclos*, 134 N.H. 42 (1991); *Morphy v. Morphy*, 112 N.H. 507 (1972).

“[N]otice and an opportunity to be heard are basic essentials of a judicial proceeding” (quotation omitted); *cf. Boddie v. Connecticut*, 401 U.S. 371, 376–79, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971) (given the fundamental importance of marriage and divorce, due process considerations regarding notice and the opportunity to be heard are implicated). Under both Part I, Article 15 of the New Hampshire Constitution and the Fourteenth Amendment of the Federal Constitution, “an elementary and fundamental requirement of due process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *City of Claremont v. Truell*, 126 N.H. 30, 35, 489 A.2d 581, 585 (1985) (brackets, quotations, and ellipses omitted). The Family Court failed to provide Mother basic procedural due process when it modified provisions of the Parenting Plan neither party requested.

The Family Court’s assertion that the parties were on notice of the Court’s additional *sua sponte* changes because of “proposals and arguments made during the hearing” by Mother, do not cure the absence of procedural due process as the changes the Court went far further than the single change requested by Mother, which was submitted as a joint proposal. (See *infra*, footnote 2). Mother’s modification request addressing resolution of vacation schedule conflicts –did not encompass the sweeping changes made by the Court without notice or request from the parties.

The Court erred by modifying the final Parenting Plan beyond the parenting schedule, when neither party requested or agreed to such modifications. Accordingly, Petitioner requests this Court vacate the Family Court’s *sua sponte* amendments to the Parenting Plan.

CONCLUSION

The Family Court's modification of the parties' Parenting plan should be reversed as the Court relied upon grounds that were not pled and not properly noticed. The Court also made further changes to the Plan that neither party requested. Finally, the Court erred when it concluded RSA 461-A:11(g) authorized modification as it was undisputed the parties continue to live in the same general location today as they did at the time of their divorce and the adoption of their Parenting Plan.

Respectfully submitted,

Alexandra Gamble
By her attorneys,

Primmer Piper Eggleston & Cramer PC

Dated: 11/29/2022

By: /s/ Doreen F. Connor
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REQUEST FOR ORAL ARGUMENT

This Court should reverse the Family Court's modification on the pleadings. In the event this Court concludes oral argument would assist the parties, Ms. Gamble designates Attorney Connor to represent her interests.

/s/ Doreen F. Connor
Doreen F. Connor, #421

CERTIFICATION OF WORD LIMIT

I hereby certify that the total words in this Brief do not exceed the maximum of 9,500 words.

/s/ Doreen F. Connor
Doreen F. Connor, #421

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief was this day forwarded to counsel of record, through the Court's electronic filing system.

/s/ Doreen F. Connor
Doreen F. Connor, #421

ADDENDUM

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**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

10th Circuit - Family Division - Portsmouth
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NOTICE OF DECISION

**SARAH G. LANDRES, ESQ
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MANCHESTER NH 03105**

Case Name: **In the Matter of Alexandra Rourke and Sean Rourke**
Case Number: **670-2019-DM-00254**

Enclosed please find a copy of the Court's Order dated May 03, 2022 relative to:

**Final Order on Respondent's Request to Modify Parenting
Orders and Cross Petition to Force Compliance with Order on
Sub-Division of Costa Rica Property
Parenting Plan**

May 04, 2022

Tracy L. Meyer
Clerk of Court

(670812)

C: Jessica L. Ecker, ESQ

MAY 9 2022

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

ROCKINGHAM COUNTY

10th CIRCUIT – FAMILY DIVISION – PORTSMOUTH

IN THE MATTER OF ALEXANDRA ROURKE AND SEAN ROURKE

670-2019-DM-00254

FINAL ORDER ON RESPONDENT'S REQUEST TO MODIFY PARENTING ORDERS AND CROSS
PETITION TO FORCE COMPLIANCE WITH ORDER ON SUB-DIVISION OF COSTA RICA PROPERTY

The Court on March 24, 2022 heard the matters pending in the above docket. Both parties appeared represented by counsel. Petitioner was represented by Sarah Landres, of Primer Piper Eggleston & Kramer, P.C. and Respondent was represented by Jessica Ecker, of Weibrecht & Ecker, PLLC. Both parties were well represented in the case was responsibly presented.

The case was reopened by Respondent who filed a petition to bring forward and to modify parenting plan. Respondent filed an answer and Cross claim, seeking to require the Respondent to comply with the Final Decree, specifically as to completing the subdivision of a lot the couple had purchased during the marriage in Costa Rica.

The Court heard the evidence both by offer of proof, verified by the witnesses present, and by direct testimony of each party. The Court denied on the record an oral request by Petitioner's counsel to dismiss the parenting modification request on the pleadings, Petitioner arguing the Respondent had failed to plead sufficient facts to justify modification under NH RSA 461-A:11. The Court does recognize the limitations to its discretion set forth in In re Muchmore & Jaycox, 159 N.H. 470, 474 (2009). The Court cannot grant modification unless it finds statutory language allowing such modification. The Court found based on the evidence sufficient facts had been pled, and denied the request at the start of the hearing electing instead to hear the case on the merits. The Petition to Modify did reference specific sections under NH RSA 461-A:11, I (d) and (g). Facts pled in the pleading also implicated (b) and to a lesser degree (h).

The Court includes the following findings of fact and rulings. The parties' initial agreement in question was submitted as a stipulation on August 12, 2019. The court initially rejected the proposed stipulations by Order of Non-Approval dated August 15. See Ct., Index #10. The Court noted several issues, two of which were relevant for today's hearing. First, the Court indicated it desired more details on who would pay for the subdivision. The Court also wrote "Under RSA 461-A, parenting plans require detailed schedules in case parties cannot otherwise agree. The Court

requires more detailed provisions absent a hearing on the issue.” As a result, the parties filed an additional addendum apparently produced after the parties engaged all of three mediation. As a result, the court then approved the stipulations incorporating the additional details provided in the agreement filed by the parties on September 12, 2019. See Ct., Index #12. The Court finds relevant to the current review, a statement on page 1 of the 2 page addendum which indicates:

At this time, the Petitioner is living in the New Hampshire Seacoast area and the Respondent is living primarily in Costa Rica. The parties intend to exercise a flexible schedule based on the Respondent’s time in the Seacoast and in Costa Rica. If the parties are not able to agree on a schedule based upon circumstances, they agree to the following schedule(s):

During months that the Respondent is in the NH Seacoast area: at least one week night dinner/afterschool visit per week, and at least 2 weekends per month. These weekend visits shall include overnights if he has lodging/living arrangements that allow for overnight visits with (SIC) his children. If he does not have lodging/living arrangements that allow for overnights with the children, he shall be entitled to spend the hours between 9:00 AM and 6:00 PM on Saturday and Sunday with the children during his weekends. If the parties cannot agree on weekends, Sean shall be entitled to the first and 3rd weekend of each month. Sean shall provide Alexandra travel dates with as much notice as possible, but at least 14 days.

The Agreement by its plain language anticipated employing a “flexible schedule based on the Respondent’s time in the Seacoast and in Costa Rica.” The parties’ testimony at the hearing on modification confirmed both parties anticipated the schedule would be flexible. This is also consistent with the original proposed stipulation which it recognizes the parties intended to have a flexible parenting schedule. Evidence indicated that both parents love the children and primarily engage in appropriate parenting when with and around the children. The Court considers the proffers relative to witnesses Erin Minehard, John McIntyre, and Mirijka Beauchesne Respondent’s significant other as well as from Todd Endress who is the Petitioner’s current husband (who also was subject to brief cross exam).

Of most relevance to the Court was the testimony of the parties. The Court learned that Sean Rourke currently lives at 44 Main St. in Rye, NH. He lives in a winter rental and expects to close on a house in Elliott, Maine on April 24, 2022. He testified that within weeks of signing the stipulation, he concluded that he could not return to live primarily in Costa Rica. He indicated it became apparent to him that it would be too difficult to be apart from his children. As a result after a 3 week visit to Costa Rica, he returned to live in the Seacoast region. It is apparent based upon testimony that the schedule set forth in the Parenting Plan was primarily based upon an assumption that the Respondent would be living in Costa Rica a large part of the time, thus implicating 461:11, I (g).

That situation did not come to fruition. It appears that after the Agreement was signed the Respondent returned to Costa Rica and then found he could not live there away from his children. The Respondent returned and has been living full time in the Seacoast region, specifically Rye, New Hampshire. He will soon be moving to Eliot, Maine. He has obtained stable work which he appears to excel at in Dover, New Hampshire. He plans to stay in the area, and is selling his building lot in Costa Rica. He also appears to be a loving and involved parent, who wishes to be a bigger part of the children's lives than the current Parenting Plan allows. Despite all these facts, there are additional relevant facts discussed below.

Respondent testified that the parties have engaged in a flexible parenting scheduling, but when he sought to expand his time beyond an every other weekend overnight and one night a week overnight schedule, a schedule he claimed that had been ongoing for multiple years, the Petitioner refused. He testified that for the bulk of the time since the original Parenting Petition was approved he has had the children overnights every Wednesday with a drop off at school on Thursdays, and every other weekend from Friday through Monday morning drop off at school.

Petitioner testifies that the parties have continued to engage in a flexible parenting schedule, though she acknowledges she put the brakes on a parenting time expansion that she had agreed to on a trial basis. The parties had been involved with Kathy Forbes Fisher. In an attempt to address Respondent's desires for more time Petitioner agreed to attempt a trial where Respondent was given more parenting time. The actual Parenting Plan allows for a weeknight visit on Wednesdays (but not an overnight) and overnights every other weekend on Friday and Saturday. She testified she agreed to expand his time to include an overnight on Wednesday as a result of COVID epidemic. Additionally, she testified that she agreed to add the Sunday overnight in part to address the children's desires. She testified further modification is not in the children's best interest. Petitioner raised concerns with Respondent's temper when his plan is challenged, and raised concern with his lack of similar parenting norms while the children are with him.

Both parties agree that at some point prior to the Respondent filing to reopen the parties began to engage in co-parenting counseling. They worked with Kathy Forbes Fisher, and as a result of that work, agreed to a trial period between November, 2020 and February, 2021 where Respondent father would have expanded parenting time. The parties described the expanded parenting time differently. Respondent described it as starting a 2-2-5 schedule, while the Petitioner described it as expanding time to include an additional overnight every other week. Upon further questioning, it is apparent that the trial period did not include a 2-2-5 each week, but did allow for something close to a 2-2-5 schedule every other week. The Petitioner indicated that

she began to become uncomfortable with the expanded schedule. She did not identify a specific reason for being uncomfortable. At a February 26, 2021 meeting with Kathy Forbes Fisher, Petitioner advised the Respondent and Ms. Forbes Fisher that she was terminating the expanded schedule trial. She indicated the Respondent became angry during the meeting and began to talk over the co-parenting counselor. After the session ended the parties relationship became strained. The Respondent filed the current action soon thereafter.

Petitioner testified about a number of instances where the Respondent exhibited anger towards her. She has concern with his behavior when he does not get his way. She testified concern about what will happen with the children when they reach an age where the children assert themselves more. She believes this will result in significant conflict with the Respondent and children, placing the children in dangerous situations. Both she and her current partner, Todd Endress, testified about an incident that occurred in the presence of Lincoln, who is 8 years old. It occurred outside during a drop off at her residence. Respondent arrived with red and glassy eyes. Respondent displayed aggressive behavior in talking with Todd Endress about Petitioner's decision to terminate the trial period. Respondent raised his voice and became animated. He was also standing very close to Mr. Endress. Respondent appeared unaware that Lincoln was outside the vehicle, and could overheard the discussion. Lincoln became upset and began crying.

A separate incident occurred when the couple met to talk about dividing the Costa Rican property. This occurred at Café Kilm in Portsmouth, New Hampshire. During the meeting the Petitioner disclosed her relationship with Mr. Endress. She advised Respondent that the children had met Mr. Endres prior to Respondent meeting Mr. Endres. Respondent became upset, apparently in part because one of the children had already advised him about meeting Mr. Endres. Petitioner testified that when she recognized the conversation was becoming escalated she tried to leave. The Respondent followed her out of the shop, to her car. He dumped his drink on her windshield and flipped her off as she drove away. It is recognized that within a short period he texted Petitioner expressing his regret. He later apologized in a written letter.

Both parties asserted that the other parent has asked the children to keep secrets from the other parent. The Court finds that both parties have in fact done this. Respondent asked the children not to tell the Petitioner recently about his plans to purchase the house in Eliot. Petitioner asked the children to let her tell Respondent about meeting Mr. Endres. Despite the different presentations, the Court finds the behavior similar. The Court does not expect parents to be perfect. In this case it is perhaps necessary for each parent to learn objective self-awareness, and afford their co-parent similar understanding.

Evidence does suggest that Respondent has issues controlling his anger. The Court agrees that Respondent will benefit from addressing those issues with counseling. Exhibits and evidence indicates he at times becomes frustrated with his interactions with Petitioner when parenting disputes arise. Petitioner testified that the parties co-parent better when there is structure in place. It was acknowledged by both parties that Petitioner is very organized, and writes detailed emails. Evidence indicates that there are times where Respondent declines to answer Petitioner's written communications. These emails commonly address the complex scheduling that parenting three children require. The emails will include medical and educational appointments, summer vacation and extracurricular activity planning. Respondent did not contest that at times he does not respond to issues, because he feels like he is being dictated to. He is described as being "more relaxed" in his parenting style. The Court understands that Respondent may interpret the detail as controlling. Unfortunately, details are often necessary to coordinate the complex co-parenting scheduling, and the children's complex needs. The Court understands from the parties' testimony that more structure in the Parenting Plan may help limit one party from perceiving the other as controlling. Regardless of how detailed this Order ends up being, the parties will still need to work together on co-parenting. It is important that both parents develop their personal ability to understand the co-parent's various obligation in life and the co-parents own expectations. Validating the other co-parent's concerns, challenges and expectations is important in reaching a reasonable decision.

Respondent has remained involved with the children's lives. Both parents appear to have acted in good faith with what remains a very ill defined parenting situation (despite the Court eventually approving it). Respondent seeks equal or almost equal parenting time. His final proposal would add an extra overnight every other week, and a one on one period for each parent to spend time with one child every other week. Neither side presented any significant evidence that the children are at risk with the other parent. Petitioner did express concerns with Respondent's temper, and how that may impact the children. She expressed concern with what might happen when the children assert their own independence, which inevitably will interfere with the Respondent's schedule or plan. The Court finds that despite the more recent conflicts that the parents have a history of working fairly well together. This is also true with the Respondent and Petitioner's partner Mr. Endres.

As to the Costa Rican property, Respondent did not fully engaged in the subdivision process. He argues that he had legitimate concerns necessitating delays, so that he could protect the value of his lot. An individual identified as being in a business relationship with Petitioner, the owner of the property from which the parties' current five acre lot was purchased, at one point asserted an

interest in the water rights on Respondent's lot. He testified that it was necessary to resolve that issue as the water rights claim would have made his lot undevelopable and thus significantly less valuable. It is apparent that Respondent did not adequately communicate his concerns or address the issues in an open and cooperative manner. Instead, he delayed signing a proxy which would have allowed the Costa Rican lawyer representing the parties' corporation in Costa Rica that owns the land from completing deeds allowing the subdivision of the land. The Costa Rican lawyer had to go through other means to complete the process. The Respondent did not wish to remove his lot from the corporation as it would likely entail transfer tax and costs, only to have to pay similar transfer tax and costs upon sale of the actual lot to third party.

The issue will hopefully be resolved without the need of multiple transfers because the lot can be transferred directly from the corporation in a third-party sale if as expected the Respondent's lot is purchased in the next several weeks. The Court asked if either lawyer foresaw any challenge should a closing not occur in the near future to agreeing by contract to protect Respondent's rights and/or value under a contract between the Petitioner, Corporation and Respondent. There did not appear to be any impediment. The parties also seem willing to allow Respondent a limited period of time to close with the current third-party buyer.

II. Rulings

The Court reviews the modification request under New Hampshire RSA 461-A:11, I(a)-(i). Relevant to this case are the following subdivision:

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

(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.

...

(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.

Based upon the testimony the Court finds sufficient evidence to meet Respondent's burden under 461-A:11(g) to modify the Parenting Plan, at a minimum. The Parenting Plan was designed as noted above, for a situation where the Respondent father was living primarily in Costa Rica. Travel between the two for the children was only possible if traveling with a parent due to their age. It anticipated the Respondent spending periods of time in the Seacoast area while he lived primarily in Costa Rica. It contained specific provisions increasing time while he was in New Hampshire (overnights) on the weekends if he had a stable and safe residence. It was not written contemplating that the Respondent was living full time in Rye, New Hampshire. The Respondent does live in Rye and may soon live even closer in Eliot, Maine. The Respondent has remained a material part of the children's lives, despite the co-parenting relationship being strained at times. The strain is arguable related to a loosely defined or "flexible" Parenting Petition. Evidence does not support Petitioner's argument that the current Parenting Plan contemplated the current situation with both parties living in the Seacoast region. The Parenting Plan contemplated the Respondent being transient when in the Seacoast, recognizing he would primarily be in Costa Rica.

The Court also believes the Parenting Plan does not serve the children's best interest given that both parents live locally. It allows the Petitioner to impose limited time on the Respondent, and while she is likely a more detail oriented parent, that parenting imbalance results in conflict between the Parties. Petitioner recognizes this in part when she argues that a more detailed Parenting Plan will better serve the children. The lack of detail in the current Parenting Plan leaves the Petitioner subject to RSA 461-A:11 (b) challenges relating to claims of "repeated, intentional and unwarranted interference by a parent with the residential responsibilities of the other parent." The children in the Plan are primarily with her, but it allows for undefined liberal parenting time for the Respondent when he is in the Seacoast area. Each time she asserts herself to limit parenting time between Respondent and the children, it interfere with Respondent's parenting time. The Court finds that the current Parenting Plan does not well serve either parent as a result. It creates

conflict. By example, the Respondent argued at trial that the decision to cut time while engaging in co-parenting counseling was unreasonable given the “flexible” schedule contemplated and the parties’ co-parenting work with Kathy Forbes Fisher. Unfortunately, his reaction was perceived as being aggressive. He is understood to have ended the co-parenting work and to have stopped communicating regularly with the Petitioner. His actions were not helpful to the co-parenting situation. A more detailed Parenting Plan will help the Parties avoid similar circumstances in the future.

The current Parenting Plan with the parties’ unwritten changes incorporated into their daily practices over the past several years results in the Respondent experiencing about one third of the parenting time. The Petitioner has had the children two thirds of the time. By agreement for approximately three months, this percentage was increased for the Respondent to between 12 and 13 days per month (considering 4.33 weeks per month). The Petitioner mother then required the parties to return to the ten versus twenty days per month schedule, resulting in the current discord between the parties. The Respondent father’s time is recognized to be less than the Petitioners. As a result Respondent’s request to modify does not fit easily into the confines of RSA 461-A:11, I (d) because that section of the modification statute requires the parties to have equal or substantially equal parenting time. Regardless, the Parenting Plan is no longer working and it is not serving the best interest of the children. The Court does recognize that the parties had shared parental rights and responsibilities for the children. Both party spends material periods with the children, including working together to ensure that there is some one on one time with a child when a child expresses an interest. The Court agrees with Respondent that the original allocation of parenting rights and responsibilities is not working. It is apparent that both parties believe more structure would benefit the co-parenting situation. The Court as such believes modification of the Parenting Plan is in the best interest of the children at this point. Even if it were determined that 461-A:11, I (d) does not apply, the above considerations are relevant. The Court does agree with Respondent that section 461-A:11, I (g) of the modification statute does applies.

The Court also recognizes that an argument could be made that the Respondent father was going to be working in Costa Rica primarily, but is now working in the Seacoast area. See RSA 461-A:11, I(h). This was not an argument raised by Respondent mother directly but facts were elicited to cause the Court to consider its application. It was established that the Respondent works in Dover. He has done so for some time now. He has advanced in his job, and apparently the children like going to his shop. The current Plan did not contemplate Respondent working full time in New Hampshire, which is a substantial change. The Court also notes it has already found above that a

change in the current Parenting Plan is in the best interest of the children, in part because the Respondent is now permanently working and residing in the Seacoast area.

Given these considerations the Court finds a change in the Parenting Plan is appropriate. The Court at the end of the hearing suggested to the parties they may wish to engage in some additional discussions about what a mutually acceptable parenting plan would look like. RSA 461-A:2, 1(c). Unfortunately, the Court has not received an agreement or indication that the parties wish to be allowed time to try to work something out. It issues the attached Parenting Plan with the children's best interest in mind. In considering the modification of the prior Parenting Plan the Court keeps in mind the relevant direction offered in 461-A:2, specifically that children "do best when both parents have a stable and meaningful involvement in their lives" and that "unless it is clearly shown that in a particular case it is detrimental to a child, to ... [s]upport frequent and continuing contact between each child and both parents." RSA 461-A:2.

The Court is aware the Petitioner mother asked the Court to consider a 3-3-4 schedule if modification was to be granted. She was not able to explain the schedule itself but noted it is a preferred schedule according to the American Academy of Pediatricians. Respondent proposed a different schedule. He proposes the current schedule primarily, but formalizing that he should have the children on every Wednesday evening through Thursday morning, and every other weekend from Friday through Monday at school. On the first and 3rd Monday evening he would also have one of the children for one on one time, and on the second an 4th Monday he would have two children so Petitioner could have one on one time with a child.

Respondent is not inclined to adopt the 3-3-4 schedule, and Petitioner is not inclined to adopt the Respondent's proposal. The Court assumes that the Petitioner may have been intending her proposal to be a 3-3-4-4 schedule. Over a two week span, this gives each parent a 3 night period and a 4 night period but one parent is deprived of a full weekend. The Court does not believe that the 3-3-4-4 works in the best interest of the children given that each parent works, and appears to enjoy weekend time with the children. It would result in one parent not being able to enjoy Saturday night during the weekend. It is not appropriate in this case where both families desire regular uninterrupted weekend time.

The Court also does not believe Respondent's proposal is appropriate. It continues to leave open issues that require regular co-parenting decisions relating to an ill-defined issue, which is which child is going to have 1 on 1 time each week. Respondent's schedule also subjects the children to a variable schedule with multiple moving parts each week. The parents have not been

able to effectively make similar decisions of late. The Court instead believes a set parenting schedule will best serve the children.

The Court instead considered two variable parenting schedules. The first is a 2-2-5 schedule explained visually below:

Sunday	Monday	Tues	Wednesday	Thursday	Friday	Saturday
Mom	Dad	Dad	Mom	Mom	Dad	Dad
Dad	Dad	Dad	Mom	Mom	Mom	Mom

The second is a 2-2-5, 1-3-5 transitioning schedule, which looks like the following:

Sunday	Monday	Tues	Wednesday	Thursday	Friday	Saturday
Mom	Dad	Mom	Mom	Mom	Dad	Dad
Dad	Dad	Dad	Mom	Mom	Mom	Mom

The Court recognizes that the Petitioner has traditionally done more of the day to day parental oversight. She has done well in this role, and likely perceives herself as such. She is more organized and more detailed orientated. The Court recognizes that she has also borne more of the heavy weight of day to day parenting, arranging for medical and educational appointments, camps and other day to day issues. This is commendable, but not necessarily a ground to limit the other parent's parenting time. The Court has some concern with the Respondent's anger, and that would be a legitimate issue if it commonly occurs in the presence of the children. To date, two examples were offered. Both were concerning. There was also some indication Respondent may have been impaired by marijuana on the incident occurring at the Petitioner's residence. The incident at the coffee shop was inappropriate and bordered on a violation of RSA 173-B, though it appears based upon testimony to be an outlying behavioral breakdown. The withdrawal from co-parenting also shows if the allegations are accurate some narcissistic or perhaps more accurately, significant passive aggressive behavioral tendencies, withdrawing from the interaction as a punishment to the other party.

The Court finds it difficult based upon the presentation from the Respondent to determine if he prefers a 1-3-5 and 2-2-5 over 2 weeks in favor of the Petitioner or a 2-2-5. The Court would welcome the parties arranging for 1 on 1 time for the children, but is not willing to mandate a Plan that requires regular interactions on parenting time and decision making about how to do it. As a result of its decision that primarily finds the parties both appropriate parent the children when the

children are with the parent, the Court elects the 2-2-5 schedule for the sake of certainty and regularity for the children. It delays implementation until the first full week of July, 2022. The Court does this for two reasons. First, it orders that the Respondent shall immediately locate and complete an intake with an individual counselor to address the behavioral issues and potential substance use issues identified above. The Court believes working with an individual counselor will likely improve Respondent's parenting and communication skills, as well as address Petitioner's concerns with future conflict developing when the children began to assert their own independence. It is a reasonable concern. The Court expects parties to work on presenting consistent parenting structures to limit the children playing off of each parent as the children grow older. The parties are encouraged to work together to ensure this occurs, with both parties listening and respecting the other party's feelings about parenting practices in working on a common structure. The Court thus encourages continued co-parenting work with Ms. Forbes Fisher once Respondent has engaged an individual counselor.

As to the second reason to delay transition to a 2-2-5, the Court elects to have the transition occur after the conclusion of the current school year. This is in part to guard against negatively impacting the children's educational situation. Summer is also a time where spreading the parents' co-parenting responsibility allows more outdoor activities, something both parties recognize the Respondent tends to excel at. The Court anticipates this will help the children make have a smooth transition.

Over all the Court's intent was leave much of the original stipulated Parenting Plan in place, but incorporate more specifics on allotted times. It is not meant as a punishment directed at the Petitioner. She has done an excellent job parenting the children, and carrying the heavier day to day burdens therewith. It expects the Respondent to rise to the increased challenges, and not to react negatively to details recorded in communications. He will need the details to be effective under this new Parenting Plan.

Should the parents wish to agree to an alternative plan, or on specific issues raised by the modified Parenting Plan, the Court will allow a stipulated parenting plan to be filed within 30 days of issuance. The parties as they know are allowed to modify the week to week schedule based upon a mutual decision, for example to incorporate 1 on 1 time, but the Court declines to mandate or build that into the Parenting Plan.

As to the Petitioner's request for Contempt for Respondent's failure to co-operate in the subdivision process, the Court declines to fine a willful disregard for the Court's approved final Stipulation based upon evidence presented. It is clear that Respondent dragged his feet. He

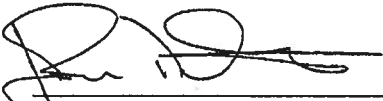
showed poor communication skills. His actions were not open and collaborative. The Court recognizes, however, that he did have a legitimate concern relating to the property subdivision process, and it recognizes that the issue now appears resolved. The Court cannot find a willful disregard for the Court's orders, but some monetary remediation is appropriate given Respondent's actions. Thus, the Court Orders that the Respondent shall reimburse the Petitioner for any legal fees incurred by the Corporation (that the Parties own) which owns the property being subdivided, specific to his refusal to sign the proxy. In other words, testimony indicated that counsel had to complete a work around as a result of the Respondent's failure to sign the proxy. Petitioner should not have to pay half of that costs given the parties stipulated Final Decree. Petitioner shall provide a copy of any itemized bill from the lawyer in Costa Rica with a request for a specific amount based upon this order. That request shall be provided within 10 days of the issuance of this Order. Respondent has 10 days to object to the amount in writing with the Court. If no objection is made within 10 days of receipt of the request, payment will be made within 30 days of receipt of the request.

The parties were well represented in this action. Both lawyers were well prepared and did an excellent job presenting their cases. The Court issues no other orders at this time.

So Ordered,

5/3/2022

Date



Judge John Pendleton

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
<https://www.courts.nh.gov>

Court Name: 10th Circuit - Family Division - Portsmouth
Case Name: In the Matter of Alexandra Rourke and Sean Rourke
Case Number: 670-2019-DM-00254

PARENTING PLAN

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

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

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 Alexandra Rourke and Sean Rourke

Case Number: 670-2019-DM-00254

PARENTING PLAN

This parenting plan is for the following children born to, or adopted by, the parties:

Full Name	Date of Birth
Molly Rourke	June 28, 2011
Lincoln Rourke	August 13, 2013
Hannah Rourke	December 30, 2014

A. Decision-Making Responsibility:

1. Major Decisions: These include, but are not limited to, decisions about the children'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 children

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: Alexandra Gamble (parent's name)
19 Cross street Kittery ME 03904

Legal Residence of: Sean Rourke (parent's name)
715 Long John Road Rye NH 03870

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 children.

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

2. Day-To-Day Decisions: Each parent shall make day-to-day decisions for the children 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 children 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":

The parties prior Parenting Plan will be modified, effective the first full week after the current school year to as follows:

Children with mother every Wednesday and Thursday from school pick up or 12 pm on non-school days; with father every Monday and Tuesday, from school pick up or 12 p.m. on the non-school days, and weekends shall alternate from Friday after school or 5PM during non-school periods through Monday at school pick up or 12pm on non-school days. The Court's intent generally is to have the parties' employ a 2-2-5 schedule recognizing mother has a slightly longer parenting period on Friday's

Add-042

Case Name: In the Matter of Alexandra Rourke and Sean Rourke

Case Number: 670-2019-DM-00254

PARENTING PLAN

Both parties shall be allowed to attend any extracurricular activities. The parties will not schedule extracurricular activities during the other parents parenting time without mutual agreement, recognizing the child's best interest and desires as they may be to participate in such activities. Each parent shall be responsible for ensuring that the children attend regularly scheduled activities, including but not limited to sports, religious and extracurricular events, while the children are with that parent. Parties will cooperate with the other in addressing reasonable schedule change requests relating to work or other matters, and both will also when possible attempt to honor a child or parents request to allow some one on one time for the child with a parent on occasion.

(b) The children 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)) The parties will work together toward a mutually beneficial holiday schedule by agreement that allows each parent to share holidays and other special occasions with the children. In the event of disagreement, the following schedule shall apply:

Holiday or Special Occasion	Even years	Odd years	Parenting Time
Thanksgiving Day	Sean	Alexandra	Wednesday at 5:30 pm to Friday at 8:00 am
Day after Thanksgiving	Alexandra	Sean	Friday at 8:00 am to Saturday at 8:00 am.
Christmas eve/day	Sean	Alexandra	8:00 am or start of school until 10:00 am on 12/25
Christmas day	Alexandra	Sean	10 am on 12/25 to 10:00 am on 12/26
New Year's Eve/Day	Sean	Alexandra	10:00 am on 12/31 until 10:00 am. On 1/1
Mother's Day	Alexandra	Alexandra	Saturday at 5:30 pm until Sunday at 5:30 pm
Father's Day	Sean	Sean	Saturday at 5:30 pm until Sunday at 5:30 pm
Alexandra's Birthday – May 4	Alexandra	Alexandra	10 am or after school until 9:00 pm
Sean's Birthday – December 10	Sean	Sean	10 am or after school until 9:00 pm

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.

Add-043

Case Name: In the Matter of Alexandra Rourke and Sean Rourke

Case Number: 670-2019-DM-00254

PARENTING PLAN

(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. Parties may agree to alter regular schedule during this period, however.

(b) February, April, and Summer Vacations:

The parties will work together towards a mutually beneficial agreed to vacation schedule that allows each parent to have a reasonable share of vacation time with the children. The vacation schedule agreement supersedes the routine schedule but not the holiday schedule. Each parent shall provide the other parent with an itinerary/travel information, location and telephone numbers for emergency purposes when traveling with the children. Absent agreement the following will apply: Each parent may enjoy 10 uninterrupted days with the children Friday to the second Sunday thereafter each summer. The parties will ensure that the following weekend is enjoyed by the non-vacationing parent. In odd years father shall have first pick of days, to be scheduled 30 days before the last day of school, and in even years mother shall have first pick with same scheduling deadline. Not making timely notice simply means the 10 days when schedule will not interfere with other scheduled summer activity of the children. As to February and April vacation those periods are to be split equally absent agreement. In odd years mother will have first pick of which vacation week to take and father will have same in even years. Pick to be made 30 days prior to the February school vacation week. Parents will do their best to allow the children to participate in any mandatory extracurricular activities during a school vacation week break.

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: _____

PARENTING PLAN

6. Other Parental Responsibilities:

Each parent shall promote a healthy, beneficial relationship between the children 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 children.

Neither parent shall permit the children 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 24 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 children's clothing for them for their scheduled time with the other parent. These clothes are to be considered the children's clothes and shall be returned with the children.

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

(e) As the children 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:

Parties will not leave the children at home alone until both agree children are old enough for that to occur.

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 Alexandra Gamble (F/K/A Rourke) (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 _____ school district where parent _____ (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:

PARENTING PLAN

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:
Each party shall be responsible for pick up at the other parties residence or at the child's school depending on the transition, at the start of their parenting time.

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:
Each party is responsible for their own transportation costs.

4. Court also incorporates language from original Parenting Petition submitted on August 12, 2019 in paragraph 2 under Exchanges on page 7, as if this language is incorporated herein by reference. In summary, however, exchanges shall not involve any disputes between the adults in front of the children, and/or evidence any conflict between the parents. The parties are not to disparage each other or allow the children to be exposed to 3rd parties disparaging the other parent. See Court Index # 3, Pg. 7, Para #2.

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 children's school records, and both parents are encouraged to consult with school staff concerning the children's welfare and education. Both parents are encouraged to participate in and attend the children's school events.

Both parents have equal rights to inspect and receive governmental agency and law enforcement records concerning the children.

Both parents have equal rights to consult with any person who may provide care or treatment for the children and to inspect and receive the children'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 children, including the children'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 children reside with one parent, the other parent shall be permitted to speak by telephone with the children:

(a) At reasonable times.

(b) At the following times only: _____

(c) Other: _____

2. Parent-Child Written Communication:

Both parents and children shall have the right to communicate in writing or by e-mailing during reasonable hours without interference or monitoring by the other parent.

Case Name: In the Matter of Alexandra Rourke and Sean Rourke

Case Number: 670-2019-DM-00254

PARENTING PLAN

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).

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 children. 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: _____

Case Name: In the Matter of Alexandra Rourke and Sean Rourke

Case Number: 670-2019-DM-00254

PARENTING PLAN

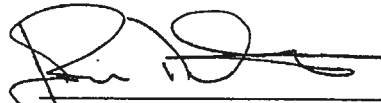
I. **Other parenting agreements important to the parents or child(ren) are listed below or are set forth in the _____ number of attached pages.**

The Court incorporates Paragraph # 1 through #6, of the original Parenting Plan, Court Index # 3, at page 8-10, as written, into this document as well. The Court also incorporates this entire Parenting Plan into the Narrative Order of same date.

So Ordered,

4/22/2022

Date



Judge John Pendleton

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT**

10th Circuit - Family Division - Portsmouth
111 Parrott Ave.
Portsmouth NH 03801-4402

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NOTICE OF DECISION

**SARAH G. LANDRES, ESQ
PRIMMER PIPER EGGLESTON & CRAMER PC
900 ELM ST 19TH FL
PO BOX 3600
MANCHESTER NH 03105**

Case Name: **In the Matter of Alexandra Rourke and Sean Rourke**
Case Number: **670-2019-DM-00254**

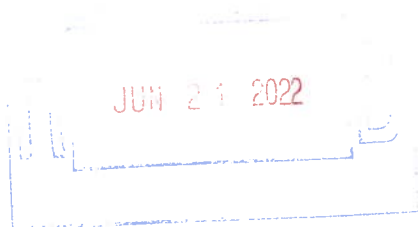
Enclosed please find a copy of the Court's Order dated June 10, 2022 relative to:
Order on Petitioner's Motion to Reconsider

June 17, 2022

Tracy L. Meyer
Clerk of Court

(670812)

C: Jessica L. Ecker, ESQ



THE STATE OF NEW HAMPSHIRE

JUDICIAL BRANCH

NH CIRCUIT COURT

ROCKINGHAM COUNTY

10th CIRCUIT - FAMILY DIVISION - PORTSMOUTH

IN THE MATTER OF ALEXANDRA ROURKE AND SEAN ROURKE

670-2019-DM-00254

ORDER ON PETITIONER'S MOTION TO RECONSIDER

The Court issues the following Orders on the Petitioner's Motion to Reconsider.

1. The Request to Reconsider Modification Because Respondent Did Not Meet His Burden

The Court denies this request, having reviewed the Motion and Objection. The Court's initial order did not misapply or misapprehend any fact or law in it's the order granting modification.

2. The Request to Reconsider Because the Court Misapprehended RSA 461-A:11

The Court denies this request generally, having reviewed the Motion and Objection. The Court's initial order did not misapply or misapprehend any fact or law in it's the order granting modification. The Court also notes it disagrees with the assertion that the parties were not on notice of changes made to the schedule, given the Petitioner's own proposals and arguments made during the hearing.

The Court will more specifically grant the request as to New Year's Day and as to each parent's birthday. See page 7 of Petitioner's Pleading. As to the summer and vacation schedule, the Court expects the parties to continue to work together in the best interest of their children, and encourages Respondent to honor any camp scheduling and traditional family vacation periods. If a hearing is necessary to address those issues due to lack of agreement, the Court will do its best to schedule a prompt hearing upon motion highlighting specific disagreements.


3. The Request as to Contempt Finding

The Court denies this request generally, having reviewed the Motion and Objection. The Court's initial order did not misapply or misapprehend any fact or law in it's the order granting modification.

So Ordered,

6/10/2022

Date



Judge John Pendleton

THE STATE OF NEW HAMPSHIRE
10TH CIRCUIT – FAMILY DIVISION – PORTSMOUTH

In the Matter of Alexandra Gamble (formerly, Rourke) and Sean Rourke
670– 2019– DM– 00254

PETITIONER’S MOTION TO RECONSIDER

NOW COMES Alexandra Gamble, Petitioner, individually and by her attorneys, Primmer Piper Eggleston & Cramer PC, and hereby requests this Court reconsider the May 4, 2022 Final Order. In support, Petitioner says as follows:

1. On March 24, 2022, the Court held a final hearing at which the parties appeared with counsel.
2. In the Final Order of May 4, 2022, the Court overlooked or misapprehended points of fact and law and the Order should be reconsidered. Fam. Div. R. 1.26 (f).

I. **Respondent Did Not Meet His Burden for Modification of a Final Parenting Plan Under RSA 461-A:11**

3. The Court overlooked or misapprehended points of fact as they related to Respondent’s living situation and intent at the time he signed the Parenting Plan and the addendum to the plan.
4. Respondent was living in New Hampshire and intended to remain in Seacoast area when the parties signed the Parenting Plan. Because Respondent continues to reside in the Seacoast, there has been neither a significant nor a substantial change in circumstance.
5. The Court also overlooked or misapprehended points of law in finding that Respondent met his burden of proof under RSA 461-A:11, I(g).

6. Respondent testified during the hearing that at the time of the signing of the original Parenting Plan and Addendum, he was living in New Hampshire. (audio, part 1 at 16:03)
7. Respondent also testified that “at the time of the signing of the Parenting Plan, [he] had no interest in moving back to Costa Rica. Because the kids had divulged interest in staying here. The children are here, this is where [he] will be.” (audio, part 1 at 16:39)
8. Although there was discussion of Respondent returning to Costa Rica at the time the Parenting Plan was being crafted, Respondent testified that living in Costa Rica “did not seem viable for a lifestyle [he] could sustain.” (audio, part 1 at 17:30)
9. Respondent made the decision not to move to Costa Rica because “the thought of being away from [the children] for that amount of time. [He] knew [he] could have a life in Costa Rica but it wouldn’t be any life that [he] would want without the children.” (audio, part 1 at 17:49)
10. When asked when he decided not to return to Costa Rica, Respondent replied that “it was pretty much immediate;” he got a job and a winter rental, and “that ended any thought of living in Costa Rica.” (audio, part 1 at 18:13)
11. When asked about his parenting time after he decided not to relocate to Costa Rica, the Respondent testified “immediately upon. . .finalization of divorce, [he] was still living at a friend[’s] house. . . .things were as they were per the parenting plan” because he needed to secure legitimate housing. (audio, part 1 at 19:55)

12. Respondent further testified that at the time he and Petitioner drafted and signed the Parenting Plan, they expected to live in close proximity to one another and their intent was to live in close proximity to one another. (audio, part 2 at 3:26)
13. Respondent knew Petitioner would be renting a place and living with the children in Kittery. Respondent's goal at that time was to live in close proximity to Petitioner, in order to be close the children. (audio, part 2 at 5)
14. At the time of signing the final Decree, Respondent planned to stay in the Seacoast area to be close to his children. (audio, part 2 at 4:24)
15. Sean did not move back to Costa Rica but stayed in the Seacoast area to be close to the children. (audio, part 2 at 5:50)
16. The Court additionally overlooked or misapprehended that the addendum to the Parenting Plan included a specific schedule for Respondent's parenting time while living on the Seacoast.
17. In fact, the parties informed their co-parent counselor that the addendum to their final Parenting Plan included a schedule for Respondent's parenting time should he decide to permanently reside in the area. (Petitioner's Exhibit 1)
18. At the time the Parenting Plan was signed, Respondent did not intend to return to Costa Rica.
19. Furthermore, the parties discussed and incorporated into their Parenting Plan addendum alternative schedules depending on whether Respondent remained on the Seacoast or *later* returned to Costa Rica.
20. Respondent did not meet his burden of demonstrating that allocation of parenting time was based in whole or in part on travel time under RSA 461-A:11, I(g).

Accordingly, Petitioner requests this Court reconsider its ruling.

II. The Court Overlooked or Misapprehended RSA 461-A:11 Insofar as it Requires the Moving Party to Plead and Prove Specific Grounds for Modification

21. The legislature has limited the authority of the trial court to modify a final Parenting Plan. RSA 461-A:11. Absent an agreement of the parties, in order to modify a permanent parenting schedule, the court must find that one of eight enumerated grounds exist, and in most cases whether the modification is also in the best interest of the child. RSA 461-A:11, I(b-i). The burden of proof is on the moving party. RSA 461-A:11, III.
22. The New Hampshire Supreme Court, in interpreting RSA 461-A:11, held that “to 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.” In re Summers & Summers, 172 N.H. 474, 483 (2019).
23. Here, the Respondent’s Petition to Bring Forward and to Modify Parenting Plan plead two specific grounds under RSA 461-A:11, I. First, he alleged that he and Petitioner “enjoyed substantially equal periods of residential responsibility for the children” See, RSA 461-A:11, I(d). Second, the Respondent alleged that “one parent’s allocation of parenting time was based in whole or in part on travel time between the parents’ residences at the time of the order and the parents are now living . . . closer to each other.” See, RSA 461-A:11, I(g).
24. The Respondent’s Petition to Bring Forward and to Modify Parenting Plan does not raise any other provision as a basis to modify the routine parenting schedule. He did not specifically plead the “repeated, intentional, and unwarranted interference by a parent with the residential responsibilities of the other parent”

provision pursuant to RSA 461-A:11, I(b), nor that “one parent’s allocation or schedule of parenting time was based in whole or in part on his or her work schedule,” pursuant to RSA 461-A:11, I(h).

25. While the court correctly found that the Petitioner failed to meet his burden of proof to substantiate his claims under RSA 461-A:11, I(d), it erred when it *sua sponte* raised additional grounds under RSA 461-A:11, I(b) and (h) as bases to modify the final Parenting Plan.
26. Without notice that the Court would rule on modification of the Parenting Plan under unpled provisions of RSA 461-A:11, Petitioner was denied the opportunity to present evidence and argument as to those issues. Specifically, that:
 - a. The allocation and/or schedule of parenting time in the final Parenting Plan was not based on either party’s employment; and
 - b. Petitioner followed the Parenting Plan that both parties agreed to and the Court approved. In doing so, Petitioner did not impose limitations on Respondent’s parenting time nor interfere with Respondent’s residential responsibilities simply because the parties disagreed about the parenting schedule and how much time each parent spent with the children.
27. As observed by the Court in Summers, the moving party not only bears the burden of proof under RSA 461-A:11, but they must also plead the specific grounds upon which they intend to rely. In re Summers & Summers, 172 N.H. at 483. The statute provides a mechanism for parties to seek modifications to a permanent parenting plan. The court is not vested with the authority to modify a permanent routine schedule without a request from a party or agreement of both

parties. In doing so in the present matter, the court overlooked or misapprehended RSA 461-A:11 and should reconsider its order modifying the routine schedule.

III. Parties Did Not Request Changes and Did Not Have Notice or Opportunity to be Heard on Changes to the Parenting Plan Beyond the Routine Schedule

28. The Court misapprehended or overlooked facts and law by *sua sponte* amending multiple sections of the Parenting Plan without such changes being requested¹ or pled by either party, or brought up by the Court during the hearing.
29. As such, the parties were denied due process as they were not provided notice or opportunity to be heard regarding additional sections of the Parenting Plan.
30. Petitioner additionally relies on and incorporates law and argument previously raised in section II of this Motion.
31. The Final Hearing addressed whether Respondent had demonstrated a basis for the Court to modify a permanent order concerning parental rights and responsibilities under NH RSA 461-A:11, I. In addressing modification to the Parenting Plan throughout the hearing, the Court and parties focused solely on the routine schedule.
32. Although the Court granted the parties additional time after the hearing and following issuance of the Final Order to agree to an alternative Parenting Plan, Respondent has thus far declined to do so. Thus, this Motion is Petitioner's only

¹ Although Petitioner included an amendment to the Vacation Schedule in her Proposed Order, this was done under the mistaken belief that the parties had reached an agreement to amend that paragraph. Neither party had included amendments to the Vacation Schedule in pleadings and no evidence on that issue was presented during the hearing. Petitioner's proposed language was limited: "In the event of a conflict with vacation dates, Sean's preference will control in odd years and Alexandra's preference will control in even years. The parties shall inform one another if there is a conflict no later than 14 days following notice of a vacation, otherwise any conflict is waived."

opportunity to address the Court's *sua sponte* changes to additional, non-routine schedule provisions to the Parenting Plan.

33. The following provisions of the Parenting Plan were modified without notice or opportunity to the parties:

a. Decision-Making Responsibility

- i. The following provision was included by agreement of the parties in the final Parenting Plan, but omitted from the newest order:
“Should a disagreement arise regarding the children’s medical treatment including, [sic] the parents shall follow the recommendation of the children’s treating pediatrician.”
- ii. Petitioner would have presented evidence and testimony regarding the basis for and necessity of including this language, in order to resolve potential conflict over medical treatment of a child.

b. Holiday or Special Occasion

- i. The following provision was included by agreement of the parties in the final Parenting Plan but omitted from the newest order:
 1. New Year’s Day, 10 a.m. to 5:30 p.m. Even years with Alexandra, odd years with Sean.
- ii. The parties agreed in the final Parenting Plan that the children would spend each parent’s birthday with that parent, from 10 am or after school until 7:30 p.m. However, the newest order changed the end time to 9 p.m.

c. Vacation Schedule

- i. The parties agreed to the following for Vacation Schedule in the original plan: “The parties will work together toward a mutually beneficial agreed vacation schedule that allows each parent to have a reasonable share of vacation time with the children. The vacation schedule agreement supersedes the routine schedule but not the holiday schedule. Each parent shall provide the other parent with an itinerary/travel information, location and telephone numbers for emergency purposes when traveling with the children.”
- ii. The amended Parenting Plan included in the Final Order limits the vacation time of each parent, absent agreement, to 10 days in the summer and either February or April school vacation. This is a significant departure from what the parties intended in their agreed upon final Parenting Plan.
- iii. If Petitioner had notice and opportunity to be heard regarding vacation, she would have presented evidence and testimony regarding plans already made for summer 2022, her family traditions, her understanding of typical deadlines for camp registration and vacation planning timeframes, as well as proposals related to the parties notifying one another of vacation or travel plans. Additionally, given the ordered change to the routine schedule, Petitioner would have presented argument regarding the three-day weekend schedule.

34. The Court erred by modifying the final Parenting Plan beyond the parenting schedule, when neither party requested or agreed to such modifications.
35. Accordingly, Petitioner requests the Court reconsider its *sua sponte* amendments to the Parenting Plan.
36. Alternatively, Petitioner requests the opportunity to be heard regarding those amendments.

IV. Respondent Willfully Disregarded the Divorce Decree by Delaying Subdivision of Property in Costa Rica

37. The Court misapprehended or overlooked points of fact and law when it found that Respondent had a “legitimate concern relating the property subdivision process.”
38. Instead, Respondent testified that it was his intention to delay the division of his parcel of property because he had concerns or suspicions regarding water concession – which, he further testified, would be legal under Costa Rican law.
39. While his concerns may have been valid, those concerns did not justify the delay in complying with the Divorce Decree. There was no testimony that a water concession on his property would somehow prevent the subdivision, but rather that it could impact the sale price of his parcel of land.
40. The Court also overlooked Petitioner’s Exhibits 11 and 12, which demonstrate that Respondent attempted to use his delays to push Petitioner to purchase his land and avoid subdivision altogether.
41. Petitioner incurred significant legal fees in New Hampshire attempting to have Respondent comply with the Final Decree. Due to Respondent’s willful disregard of the Court’s order to subdivide the property, Petitioner should be reimbursed for

these fees by Respondent.


42. Accordingly, the court should reconsider its order regarding Respondent's intentional and willful disregard of the Court's order to subdivide his property in Costa Rica.

WHEREFORE, Petitioner respectfully requests that this Honorable Court:

- A. Grant this Motion;
- B. Reconsider the Final Order and Parenting Plan;
- C. Order the original Parenting Plan and Addendum remain in full force and effect; and
- D. Order Respondent to pay Petitioner's New Hampshire legal fees related to the division of property in Costa Rica; or
- E. Hold a hearing on the provisions of the Parenting Plan that were amended *sua sponte*; and
- F. Grant such further relief as may be just and equitable.


Respectfully submitted,
Alexandra Gamble
By her Attorneys
Primmer Piper Eggleston & Cramer PC

Dated: May 19, 2022

By: 
Sarah G. Landres, NHBA #18952
Attorneys for Petitioner
PO Box 3600
Manchester, NH 03105
(603) 626-3300
slandres@primmer.com

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of foregoing has been sent to Jessica L. Ecker, Esq, opposing counsel, on May 19, 2022.


Sarah G. Landres

THE STATE OF NEW HAMPSHIRE

10TH CIRCUIT – FAMILY DIVISION – PORTSMOUTH

In the Matter of Alexandra Gamble (formerly, Rourke) and Sean Rourke

670– 2019– DM– 00254

**PETITIONER’S VERIFIED ANSWER AND CROSS-PETITION
TO ENFORCE FINAL DECREE**

NOW COMES Alexandra Gamble, Petitioner, individually and by her attorneys, Primmer Piper Eggleston & Cramer PC and answers Sean Rourke’s Petition to Bring Forward and Modify Parenting Plan and hereby petitions to enforce the property division of the Final Decree. In support, Petitioner says as follows:

1. Petitioner admits the allegations of paragraphs 1 – 3.
2. Petitioner admits the allegations of paragraph 4 and 5.
3. Petitioner admits in part and denies in part the allegations of paragraph 6.
She submits that she had moved with the children to Kittery, Maine as of September 2, 2019 *before* the Order on the Parenting Agreement, dated September 13, 2019.
4. Petitioner admits the allegations of paragraph 7, to the extent that she knows Respondent does not currently reside in Costa Rica.
5. Petitioner admits in part and denies in part the allegations of paragraph 8 and asserts that the parties worked well and flexibly regarding parenting until November 2, 2020.
6. Petitioner admits in part and denies in part the allegations of paragraph 9 and asserts that she did not break any agreements, verbal or otherwise,

regarding Respondent's parenting time. Petitioner further submits that in March 2020, the parties engaged in a three hour mediation with Rebecca Lavoie. Despite Respondent's angry outbursts during the session, the parties were able to continue to co-parent relatively well through the pandemic. That began to change on or around November 2, 2020, when Petitioner told Respondent she wanted to re-engage the mediator to discuss Respondent's request to increase the number of his weeknight overnight visits with the children. Respondent wanted to work with Petitioner without a mediator and suggested to her that their significant others participate to act as "balancing points" in the likely event that Respondent became overly angry or emotional.

7. Paragraph 10 is admitted in part and denied in part. Petitioner submits that following another three hour mediation on November 7, 2020, the parties agreed to a three-month trial period of increased overnight visits for Respondent (from 10 nights per month to 12 nights) and to engage in co-parenting counseling with Kathy Forbes-Fisher. The parties at that time set up a more structured schedule to create a more predictable routine for the children.
8. Petitioner admits in part and denies in part the allegations of paragraph 11. Petitioner asserts that joint sessions with Ms. Forbes-Fisher began December 9, 2020 and the last session was February 26, 2021. Respondent, not Petitioner, chose to stop working with Ms. Forbes-Fisher when

Petitioner did not acquiesce to Respondent's increasingly aggressive demand for equal parenting time.

9. Petitioner admits in part the allegations of paragraph 12 and denies the characterizations that Petitioner is no longer flexible, that Respondent's parenting time is very limited, that the current parenting time is limited to the schedule included in the Parenting Plan, and that the Parenting Plan was based on Respondent primarily residing in Costa Rica.
10. Petitioner admits allegations of paragraphs 13 and 14.
11. Petitioner admits in part and denies in part the allegations of paragraph 15. The parenting plan approved and incorporated into the final order outlines a parenting schedule to be followed by the parties "if the parties are not able to agree on a schedule based on circumstances." The order specifies a schedule for the "months that the respondent is in the NH Seacoast Area."
12. Respondent will have "at least one weeknight dinner/after school visit per week, and at least two weekends per month. These weekend visits shall include overnights if he has lodging/living arrangements that allow for overnights with the children." Without appropriate accommodation, Respondent's weekend visits would be from 9 a.m. until 6 p.m. on Saturday and Sunday.
13. Petitioner denies paragraph 16.

14. Petitioner admits in part and denies in part paragraph 17, and submits that Respondent's housing in New Hampshire has not been stable and, at times, has been unsafe for the children.
15. Petitioner admits in part and denies in part paragraph 18. Petitioner again asserts that she and the children moved to Kittery on September 2, 2019. Petitioner further submits that she and the children moved into their current Kittery residence on May 1, 2020. Petitioner is the sole owner of this home; her significant other did not move in until mid-March 2021.
16. Petitioner admits in part and denies in part paragraph 19, asserting that the children have rarely and inconsistently requested additional time with their father, and that Petitioner continues to be flexible allowing six additional overnight visits per month, over and above the court order.
17. Petitioner denies paragraphs 20 - 23
18. Petitioner denies the allegations of paragraph 24 and asserts that mediation and co-parenting counseling terminated due to Respondent's angry and explosive behavior during sessions and his refusal to further engage with Petitioner in any productive way. Respondent frequently fails to respond to Petitioner's emails and text messages regarding scheduling and other issues related to the children.
19. In further answering Respondent's pleading, Petitioner asserts that Respondent failed to provide the Court with an accurate description of his current parenting time. Since March 2020, Respondent's parenting time

has, at a minimum, included every other weekend – beginning on Friday afternoon and continuing until Monday morning – and one weekday overnight visit per week. Respondent currently enjoys more parenting time than what is provided in the current Parenting Plan, which does not include overnight visits on weekdays and envisioned weekends as only Saturdays and Sundays. Respondent’s additional parenting time is due to Petitioner’s willingness to work with Respondent, mediators, and co-parent counselors, in order to create a parenting schedule that works best for the three children. Petitioner is not obliged to provide Respondent with parenting time beyond what is included in the Parenting Plan. Chandler v. Bishop, 142 NH 404, 411 (1997). That Petitioner has continued to do so, despite Respondent’s alternating hostile and cold behavior towards her, is a testament to her character and commitment to the best interests of her children.

AND AS CROSS-PETITION, PETITIONER SAYS AS FOLLOWS:

Enforcement of Paragraph 16 of Final Decree

20. Paragraph 16 of the Final Decree requires the parties to work together to divide land in Costa Rica. Respondent was awarded the lower portion of the property and Petitioner was awarded the upper portion.

21. Respondent has not completed the subdivision of the property and refuses to answer questions regarding same to keep Petitioner apprised on the status of the property division.

WHEREFORE, Petitioner respectfully requests that this Honorable Court:



- A. Deny Respondent's Petition to Bring Forward and Modify; and
- B. Order Respondent to comply with the Final Divorce Decree regarding property division; and
- C. Grant such further relief as may be just and equitable.



Alexandra Gamble, Petitioner

State of New Hampshire
County of Rockingham


This instrument was acknowledged before me on July 16, 2021 by Alexandra Gamble.



Notary Public/Justice of Peace
My Commission Expires:

Respectfully submitted,
Alexandra Gamble
By her Attorneys
Primmer Piper Eggleston & Cramer PC

Dated: July 16, 2021

By: 
Debra M. DuPont, NHBA #18309
Sarah G. Landres, NHBA #18952
Attorneys for Petitioner
PO Box 3600
Manchester, NH 03105
(603) 626-3300
slandres@primmer.com

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of foregoing has been mailed to Jessica L. Ecker, Esq, opposing counsel, on July 16, 2021.

A handwritten signature in blue ink that reads "Sarah G. Landres". The signature is written in a cursive style and is positioned above the printed name.

Sarah G. Landres

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH

ROCKINGHAM, ss:
PORTSMOUTH FAMILY DIVISION

TENTH CIRCUIT COURT
DOCKET NO. 670-2019-DM-254

IN THE MATTER OF ALEXANDRA ROURKE AND SEAN ROURKE

PETITION TO BRING FORWARD AND TO MODIFY PARENTING PLAN

NOW COMES Sean Rourke, Respondent in the above-entitled matter, by and through his attorneys, Weibrecht & Ecker, PLLC, who respectfully submits the within Petition to Bring Forward and to Modify Parenting Plan, and in support thereof states as follows:

1. A Decree of Divorce was entered by this Honorable Court on September 13, 2019.
2. The parties have three children Molly Blackburn Rourke (DOB 6/28/2011), Lincoln James Rourke (DOB 8/13/2013) and Hannah Mae Rourke (DOB 12/30/2014).
3. The parties' Final Parenting Plan was approved and incorporated into their Final Decree of Divorce along with an Agreement entered into by the parties relative to the Court's Order of non-approval dated 8/15/19.
4. The parties' Agreement in the Parenting Plan and Routine Schedule states as follows:

“At this time, the Petitioner is living in the NH Seacoast area and the Respondent is living primarily in Costa Rica. The parties intend to exercise a flexible schedule based on the Respondent's time in the Seacoast and in Costa Rica. If the parties are not able to agree on a schedule based on circumstances, they agree to the following schedule: During the months that the respondent is in the NH Seacoast Area: at least one weeknight dinner/after school visit per week, and at least two weekends per month. These weekend visits shall include overnights if he has lodging/living arrangements that allow for overnight visits with his children. If he does not have lodging/living arrangements that allow for overnights with the children, he shall be entitled to spend the hours between 9 am and 6 pm on Saturday and Sunday with the children during his weekends. If the parties cannot agree on weekends, Sean shall be entitled to the first and third weekend of each month. Sean shall provide Alexandria travel dates with as much notice as possible, but at least 14 days.”

5. The Agreement outlined further that:

“It is anticipated that Alexandra will travel to Costa Rica somewhat frequently. During these times the parties agree that they will develop a flexible parenting schedule. In the event they are not able to agree on a parenting schedule in Costa Rica or times for the children to be in Costa Rica, Sean shall be entitled to a minimum of three non-consecutive weeks with the children in Costa Rica, to be exercised during school vacation weeks or summer vacation months. This three weeks will be in addition to the time he will spend with his children in the NH Seacoast area.”

6. Since entering into the Agreement, Petitioner has relocated to Kittery, Maine with the children where they now attend school.
7. Following this Agreement and the intentions herein, Respondent decided he would not primarily in Costa Rica and now resides in Rye, New Hampshire. Respondent determined it would not be in the children’s best interests for him to be so far away from them.
8. Up until September of 2020, the parties were able to negotiate reasonable, flexible and significant parenting time schedule for the Respondent which evolved into an approximately equal parenting schedule.
9. However, in September 2020 Petitioner began breaking the parties’ verbal agreements with regard to Respondent’s parenting time and that is when the parties agreed to return to mediation with Rebecca Lavoie.
10. The parties came to an agreement to have a “trial” parenting schedule in mediation, giving the Respondent a shared schedule once again.
11. During some of this time the parties were engaged in Co-Parenting Counseling with Kathy Forbes-Fisher. However, Petitioner has since terminated work with Ms. Forbes-Fisher.
12. The parties attended their last meeting with the mediator in the end of February 2021 and Petitioner has since informed Respondent that she will no longer agree to be flexible with his parenting time and has reverted to the very limited schedule outlined in the parties’ Agreement which was based on Respondent primarily residing in Costa Rica and which intended flexibility.

13. It is clear from the pleadings in this case, that the parties had always intended for Respondent to have significant parenting time with his children and that the parties' intended to be flexible with regard to the same.
14. In fact, the parties' original Final Parenting Plan with regard to the Routine Schedule initially stated that, "The parties anticipate that they will reside in close proximity for the immediate future and that the children will be able to share time with each parent." (emphasis added)
15. However, the Court issued an Order of non-approval based on the fact that it felt that the routine schedule was too vague and therefore the parties' entered into the 9/13/19 Agreement agreeing to a "fall back" schedule which again was based on Respondent living primarily in Costa Rica.
16. Since entering into the Agreement, there have been significant and substantial changes that warrant a modification of the parties' parenting plan with regard to Respondent's parenting time.
17. Specifically, Respondent does not reside in Costa Rica. He resides in close proximity to the Petitioner and has stable housing in New Hampshire.
18. Petitioner has relocated to Kittery, Maine and moved in with her significant other.
19. In addition, the children have expressed their desire to spend more time with their father than the one night per week and every other weekend Petitioner has permitted of late.
20. There is no reason that the Respondent should not be entitled to equal or substantially equal parenting time with the minor children.
21. For a period of time, the parents enjoyed substantially equal periods of residential responsibility for the children, and now Petitioner appears to determine that the original allocation of parenting rights and responsibilities is not working and a change would be in the best interest of the children. See RSA 461-A:11 (d).
22. Additionally, 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. See RSA 461-A:11 (g).

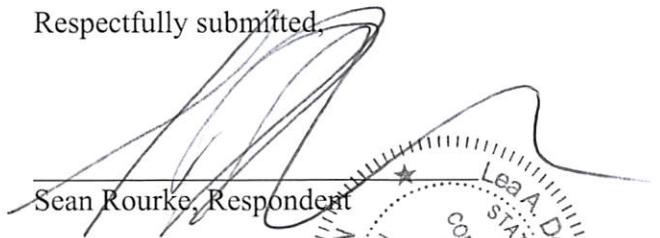
23. Given both parties' expected residences at the time of divorce (Rye and Costa Rica) have changed (Kittery and Rye), as well as the distances between them and further Respondent now has a clear ability to appropriately house the children because he has local permanent housing, not temporary housing as previously anticipated, it would be in the children's best interests to modify the parenting schedule.
24. The parties have attended mediation and attempted to resolve these issues with the assistance of a neutral third party. Unfortunately, they have been unable to resolve the problems associated with the parenting plan to date.

WHEREFORE, the Respondent respectfully requests that this Honorable Court:

- A. Allow the Petition to Bring Forward;
- B. Schedule this matter for a hearing;
- C. Modify the current Parenting Plan; and
- D. Grant such other and further relief as may be just and equitable.

4/16/21
Date

Respectfully submitted,

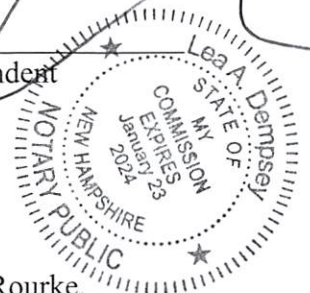

Sean Rourke, Respondent

STATE OF NEW HAMPSHIRE
STRAFFORD, ss:

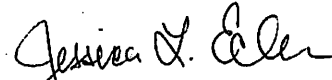
This instrument was acknowledged before me on 4/16/21 by Sean Rourke.

My Commission Expires: 1-23-2024
Affix Seal, if any


Notary Public/Justice of the Peace



By and through his attorneys,
Weibrech & Ecker, PLLC



Dated: April 20, 2021

By:

Jessica L. Ecker, Esquire
NH Bar #17759
65 Main Street, Suite 2
Dover, NH 03820
(603) 842-5525

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

Court Name: 10th Circuit - Family Division - Portsmouth
Case Name: In the Matter of Alexandra Rourke and Sean Rourke
Case Number: 670-2019-DM-00254
(if known)

PERSONAL DATA SHEET

1. Name of person(s) completing this form Sean Patrick Rourke
 (Check if applicable) Because I believe that my safety, or the safety of my children is at risk, I request that the information contained in this Personal Data Sheet not be disclosed to the other party. The reasons are: _____

2. Type of case filed today:
 Petition for Divorce Petition for Legal Separation Joint Petition for Legal Separation
 Joint Petition for Divorce Domestic Violence Petition
 Petition for Civil Union Dissolution Parenting Petition
 Joint Petition For Civil Union Dissolution Paternity/Legitimation
 Petition to Change Court Order/Modification Other: _____

3. Name of Petitioner Alexandra Rourke Date of Birth 5/4/82
State of Birth Maryland Social Security Number _____
Residence Address 19 Cross St. Kittery ME 03904
Mailing Address (if different) _____
Telephone (Cell) (603) 812-5316 (Home) _____ (Work) _____
E-mail Address a.rourke603@gmail.com
Employer's Name and Address Rockingham R.V.A

4. Name of Respondent Sean Patrick Rourke Date of Birth 12/10/1976
State of Birth Michigan Social Security Number _____
Residence Address 715 Long John Road, Rye, Rockingham County, NH 03870
Mailing Address (if different) _____
Telephone (Cell) _____ (Home) 603-767-9192 (Work) 603-964-1575
E-mail Address Revolutionboardworx@gmail.com
Employer's Name and Address Timberline Signs LLC 139 Lafayette Road, Rye, NH 03870

Child(ren)'s Full Name(s)	Date of Birth	Social Security #	State of Birth
<u>Molly Blackburn Rourke</u>	<u>6/28/2011</u>		<u>NH</u>
<u>Lincoln James Rourke</u>	<u>8/13/2013</u>		<u>NH</u>
<u>Hannah Mae Rourke</u>	<u>12/30/2014</u>		<u>NH</u>

Date 4/16/21

Signature

Date _____

Signature (if joint petition) _____

THE STATE OF NEW HAMPSHIRE

10TH CIRCUIT – FAMILY DIVISION – PORTSMOUTH

In the Matter of Alexandra Gamble (formerly Rourke) and Sean Rourke


670– 2019– DM– 00254

**PETITIONER’S PROPOSED ORDER ON MOTION TO BRING FORWARD
AND AMEND PARENTING PLAN**

NOW COMES Alexandra Gamble, Petitioner, individually and by her attorneys,
Primmer Piper Eggleston & Cramer PC and requests that the Court enter the attached
Order.

Respectfully submitted,
Alexandra Gamble
By her Attorneys

Dated: March 22, 2022

By: 
Sarah G. Landres, NHBA #18952
Attorney for Petitioner
Primmer Piper Eggleston & Cramer PC
PO Box 3600
Manchester, NH 03105
(603) 626-3300
slandres@primmer.com

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a copy of foregoing has been emailed to
Jessica L. Ecker, Esq, opposing counsel, on March 22, 2022.


Sarah G. Landres

THE STATE OF NEW HAMPSHIRE

10TH CIRCUIT – FAMILY DIVISION – PORTSMOUTH

In the Matter of Alexandra Gamble (formerly Rourke) and Sean Rourke

670– 2019– DM– 00254

PARENTING ORDER

The Court enters the following order on Respondent’s Motion to Bring Forward and Amend Parenting Plan:

1. There has been no substantial change in circumstances since the Addendum to final divorce decree and parenting plan, approved and ordered by this Court on September 13, 2019.
2. The parties currently follow a Routine Schedule that provides Father with more parenting time than what is included in the final parenting plan.
3. The parenting plan is amended as follows:
 - a. The children shall be with Sean every other weekend from Friday after school, or 4:30 p.m., through Monday morning start of school, or 8 a.m.
 - b. The children shall be with Sean every Wednesday after school, or 4:30 p.m., through Thursday morning start of school, or 8 a.m.
 - c. The remainder of the time the children shall be with Alexandra.
4. The children’s legal residence for school attendance purposes shall be Alexandra’s residence.
5. This change to the routine schedule shall not provide a basis to amend the prior order that neither parent shall pay the other child support. Alexandra shall

continue to be responsible for all of the routine, reasonable, and necessary expenses related the children's schooling, healthcare, and extracurricular activities.

6. Sean and Alexandra shall provide one another with at least 30 days' notice before changing residences. If an emergency should arise and 30 days' notice is not possible, the parties agree to provide notice to the other within 24 hours of learning of the need to move.
7. In the event of a conflict with vacation dates, Sean's preference will control in odd years and Alexandra's preference will control in even years. The parties shall inform one another if there is a conflict no later than 14 days following notice of a vacation, otherwise any conflict is waived.
8. All other provisions of the original parenting plan and addendum not inconsistent with this document remain in full force and effect.

DATED: _____

Presiding Justice

To: Sean Rourke and Alexandra Gamble
From: Kathryn Forbes-Fisher
Summary of Co-Parenting Facilitation Meetings

Sean and Alexandra were referred for co-parenting facilitation by their mediator with the goal of improving co-parenting communication and their ability to resolve conflicts in the best interest of their three children, ranging in ages from 5 to 10 years old.

Between December 2020 and February 2021, I met with each parent individually and for 5 joint sessions. Following the last joint meeting in February, Sean notified me of his decision to terminate sessions, stating "it is clear to me now that as I predicted, Alexandra lacks the willingness to move towards balance and harmony between co-parents".

The couple were married in 2010 and moved to Costa Rica in Aug-Sept of 2018. Alexandra returned home to New England in the summer of 2019 and filed for a divorce in the fall. At the time of the divorce, Sean planned to return to Costa Rica, at least on a temporary basis, while Alexandra and the children remained in Kittery Maine. Their agreed upon final parenting plan in September 2019 included an addendum stating that if Sean chose to temporarily spend time in the area, he could have day visits with the children in NH. In the event he moved back permanently and found suitable housing, the children would be with him every other weekend and for one weekday dinner.

Following the divorce, Sean returned to Costa Rica for 3 weeks before returning to rent a small cottage in Rye, NH. At that point, the parents began the every other weekend and one weekday dinner schedule which continued through the fall. Following covid, both parents agreed to increase the children's time with Sean to 10 overnights/mo, a schedule that continued until they returned to mediation in the fall of 2020. During their most recent mediation, Alexandra agreed to a "trial" of an additional 2 overnights/mo. Although Sean said he is "still fighting for a 50/50 parenting schedule, he agreed the recent change was "a good compromise". At some point during this mediation, Sean shared his plans to move in with his new girlfriend M. and her two children in the spring and to purchase a vacation cabin with her in Maine. Now that he was feeling "more settled", he said he wanted and expected to have the children 50% of the time.

Both parents agreed that their prior parenting schedule worked relatively well for the first nine months, although there were always concerns and stress related to difficulty communicating and different parenting and overall lifestyles.

Alexandra expressed concerns about Sean's "unpredictable moods" and level of anger and hostility toward her that she felt impacted their ability to communicate effectively and collaborate as co-parents. She described feeling the need to "walk on eggshells" in order to avoid conflict with him. Since their divorce, she sees him as generally "the happy fun Dad" who enjoys activities with the children but provides them with little structure and few stable routines. Alexandra also expressed concern about Sean's chronic and habitual use of cannabis as well as his openness with the children about this habit.

Sean expressed concerns that Alexandra, unlike himself, “likes to do things the hard way”, while he prefers a “simple kind of life”. He describes her as more “uptight”, “controlling” and “very critical” of him. While he knows Alexandra believes he is “too aggressive”, he sees himself as more “comfortable expressing frustration” and having open “arguments”. Sean acknowledges his habitual cannabis use and discussions with the children about it. He says he tells them that he hopes and plans to stop in the near future. In response to Alexandra’s concerns (shared during a joint session), Sean said that he never drives the children while “high” and in the event of an emergency, he would call 911 if he could not drive.

During the joint co-parenting meetings, both parents reported that their co-parenting communication was improving. They were able to discuss several topics, including how to discuss cannabis with the children, establishing bedtime routines for the children, decision-making about extra-curricular activities and arranging for one on one parenting times with children. They also addressed concerns raised by the children with one or the other parent, including changes to the schedule and challenges related to the move to M’s house.

In spite of this reported overall improved communication, Sean and Alexandra were not able to reach an agreement to move to the 50/50 schedule proposed by Sean.

Sean continued to advocate for increasing overnights with children as soon as possible, in advance of his planned move to his girlfriend’s home in the spring.

Alexandra continued to advocate for either keeping the current schedule or returning to the old one in order to allow sufficient time and opportunity for the children to adjust to recent changes and transition to their new home and family, and for parents to assess the impact of changing schedule.

Alexandra suggested parents continue co-parenting meetings to work on co-parenting communication and collaboration and return to mediation to review and revise their recently agreed upon “trial” parenting schedule. Sean declined mediation and opted to discontinue co-parenting meetings.

Kathryn Forbes-Fisher

THE STATE OF NEW HAMPSHIRE

10th CIRCUIT COURT – PORTSMOUTH FAMILY DIVISION

In the Matter of Alexandra Rourke and Sean Rourke

Docket No. ____-2019-DM-00____

FINAL PARENTING PLAN

NOW COME the parties to the above captioned matter and respectfully agree and stipulate to the terms of this Final Parenting Plan and request court-approval thereof.

I. INTRODUCTION

- A. Source of Parenting Plan. This Parenting Plan is agreed upon by the parents, Alexandra Rourke (“Alexandra”) and Sean Rourke (“Sean”).
- B. Duration of Parenting Plan. This Parenting Plan is a Final Parenting Plan.
- C. Statement of Purpose. 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 the children, 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 parents in developing a parenting plan.
- D. Applicability of Parenting Plan. This Parenting Plan is for the following children (hereinafter “the children”).

Molly Blackburn Rourke DOB: 06/28/2011
Lincoln James Rourke DOB: 08/13/2013
Hannah Mae Rourke DOB: 12/30/2014

II. PARENTING RIGHTS AND RESPONSIBILITIES

A. DECISION MAKING RIGHTS AND RESPONSIBILITIES

1. Major Decisions. These decisions include, but are not limited to, decisions about the children's education, non-emergency health and dental care and religious training:

(a) Joint Decision-Making: The parents are awarded joint decision-making responsibility. Both parents shall share in the responsibility for making major decisions about the children. The parents shall discuss and agree upon all major decisions affecting the non-emergency health, safety or welfare of the children including health care (participation in mental health care, selection of providers, course of treatment, etc.), education (which school the children will attend, special needs issues, and entry into special classes), appropriateness of child care providers, religious training and extracurricular and athletic activities (what the children will participate in when these activities involve each parent's parenting time). Should a disagreement arise regarding the children's medical treatment including, the parents shall follow the recommendation of the children's treating pediatrician.

(b) Pursuant to RSA 461-A:4, the parents' legal addresses are as follows:
Alexandra: 277 Wallis Road, Rye, NH
Sean: 277 Wallis Road, Rye, NH

(c) The parents of the children shall communicate concerning these issues. They shall not pass messages concerning such matters through the children.

2. Day-To-Day Decisions. Each parent shall make reasonable day-to-day decisions for the children during the time he/she is caring for the children. This includes any emergency decisions affecting the health, safety or medical needs of the children. A parent who makes an emergency decision or learns of a child's serious illness, injury or emotional trauma

shall share this information with the other parent as expeditiously as possible after learning of same.

- (a) Day-to-day decisions include, but are not limited to: appropriate clothing and outer wear, visiting with friends, birthday parties, sleepovers, homework, athletic, extracurricular activities and school absences due to illness.
- (b) Neither parent shall schedule activities for the children during the other parent's parenting time without first consulting the other parent and obtaining his or her prior agreement. Such consultations shall not involve the children. The parents shall mutually select, consider and enroll the children in extracurricular or other activities, when such activities affect both parents' parenting time. Each parent shall be responsible for ensuring that the children attend regularly scheduled activities, including but not limited to sports, religious and extracurricular activities, while the children are with that parent.
- (c) Both parents shall be permitted to attend all extracurricular events and activities.

B. RESIDENTIAL RESPONSIBILITY/PARENTING SCHEDULE

1. **Routine Schedule.** Alexandra shall have primary residential responsibility for the minor children and Sean shall have parenting time with the children as the parties may agree in order to provide Sean and the children time together as their respective schedules and needs may require. The parties anticipate that they will reside in close proximity for the immediate future and that the children will be able to share time with each parent. Should a disagreement arise about the routine schedule, the parties agree to seek the assistance of a mediator prior to proceeding to court.

2. **Holiday Schedule.** The parties will work together toward a mutually beneficial holiday schedule by agreement that allows each parent to share holidays and other special occasions with the children. In the event of a disagreement, the following schedule shall

control. Holidays shall take precedence over the routine schedule as well as the vacation schedule.

<u>Holiday or Special Occasion</u>	<u>Even Years</u>	<u>Odd Years</u>	<u>Parenting Time</u>
Thanksgiving Day	Sean	Alexandra	Wednesday at 5:30 pm to Friday at 8:00 am
Day After Thanksgiving	Alexandra	Sean	Friday at 8:00 am to Saturday at 8:00 am
Christmas Eve/Day	Sean	Alexandra	8:00 am or start of school until 10:00 am on 12/25
Christmas Day	Alexandra	Sean	10:00 am on 12/25 to 10:00 am on 12/26
New Year's Eve/Day	Sean	Alexandra	10:00 am on 12/31 until 10:00 am on 1/1
New Year's Day	Alexandra	Sean	10:00 am to 5:30 pm
Mother's Day	Alexandra	Alexandra	Saturday at 5:30 pm until Sunday at 5:30 pm
Father's Day	Sean	Sean	Saturday at 5:30 pm until Sunday at 5:30 pm
Alexandra's Birthday – May 4	Alexandra	Alexandra	10:00 am or after school until 7:30 pm
Sean's Birthday – December 10	Sean	Sean	10:00 am or after school until 7:30 pm

In the event the parent entitled to parenting time during one of the aforementioned holidays is unable to care for the children on that holiday, then the other parent shall be offered care of the children on the holiday prior to the children being cared for by a third party.

3. Three Day Weekends: No three-day weekend schedule shall apply.

4. Vacation Schedule. The parties will work together toward a mutually beneficial agreed vacation schedule that allows each parent to have a reasonable share of vacation time with the children. The vacation schedule agreement supersedes the routine schedule but not the holiday schedule. Each parent shall provide the other parent with an itinerary/travel information, location and telephone numbers for emergency purposes when traveling with the children.

5. Supervised Parenting Time. Not applicable.

6. Other Parental Responsibilities. Each parent shall promote a healthy, beneficial relationship between the children and the other parent, and their respective families. Neither parent shall permit the children to be subjected to any persons abusing alcohol or using illegal drugs. The further expectations of the parents are hereby established:

- a. Changes to Schedule and/or Substitution of Time. Except as otherwise set forth in other parts of this parenting plan, a parent requesting a temporary change to the parenting schedule and/or substitution of time shall act in good faith and ask the other parent about such change as soon as possible. The parents are expected to occasionally and fairly adjust parenting schedules when emergencies, important family situations (i.e. weddings, graduations, funerals or the like) or illnesses make modification reasonable, but the parent receiving a request for a change shall have the final decision on whether the change shall occur. Requests for changes shall not be a regular occurrence or based on events within a parent's reasonable control, for example activities not requiring a set date or time.
- b. Child Care. The parents agree that the children shall not be left home alone until both parents mutually agree that the children are old enough to stay alone.
- c. Children's Wardrobe and Property Each parent shall allow the children to bring appropriate clothing for their scheduled time with the other parent. The children's clothes are to be considered the property of the children and shall be washed and returned with the children.

d. Non-Disparagement.

- (i) Each parent shall promote and encourage the emotions of affection, love and respect between the children and the other parent.
- (ii) The parents shall make good faith efforts to work together to honor the other's parenting style, privacy and authority. The parents shall discourage the children from making derogatory comments about the other parent.
- (iii) Neither parent shall make derogatory comments, ridicule or defame the other in the presence of the children or allow anyone else to do the same in the children's presence. The parents shall also advise their respective friends and family members to refrain from making any similar remarks intended to embarrass or alienate the other parent, as such remarks may hurt or embarrass the children.
- (iv) All communications about adult matters, legal matters, financial matters and/or disputes related to the children shall occur at a time when the children are not present and, therefore, shall not occur at times of exchanges of the children, during telephone visits with the children, or otherwise in the children's presence. Neither parent shall involve the children in his/her disputes with the other parent and shall request that others similarly refrain from such discussions.

C. LEGAL RESIDENCE FOR SCHOOL ATTENDANCE

The children shall attend school in the school district where the parent with primary residential responsibility resides. Under this plan, that parent is Alexandra. Any decisions relating to private school education of the children, educational enhancement or special needs assistance shall be made jointly with the involvement of both parents acting in the best interest of the children. In the event of a disagreement, the parties shall seek the assistance of a mediator.

D. TRANSPORTATION AND EXCHANGE OF THE CHILDREN.

1. Transportation. Each party shall be responsible for pick-up of the children at the beginning of his/her parenting time. Unless otherwise agreed, pick-up shall occur from school or from the residence of the other parent.

2. Exchanges. When the parents meet to exchange the children, the parents will adhere to the following guidelines: (1) the children shall be fully ready for the exchange at the time the exchange is scheduled to happen; (2) the parents shall be on time for the exchange; (3) the exchange will be brief, not to exceed more than the minimal time necessary to exchange brief pleasantries and have the children move from the vehicle to their next destination; (4) any welcoming and/or parting words to the children shall be both brief and positive; (5) neither parent shall enter the home of the other unless invited to do so; (6) neither parent will engage in any conduct that could, in any way, lead to a protracted, upsetting or negative exchange of the children to include late arrival, raised voices, name calling, encouraging poor behavior by the children, insinuating that one parent's home (or one parent) is better than the other, and/or that the parent will be lonely or sad without the children, among other behaviors not designed to further the children's best interests. The parents shall ensure that the children have the appropriate necessities for their time with each parent specifically including, but not limited to, medication, schoolwork, sports equipment and the like, which shall be returned with the children upon the conclusion of parenting time, keeping in mind the best interest of the children and their need/desire for such items rather than which parent is the technical owner of such property.

E. INFORMATION SHARING AND ACCESS, INCLUDING TELEPHONE AND ELECTRONIC ACCESS.

As parents with joint decision making responsibility and authority, the parents have equal access to all information relating to the health, education, and welfare of the children. Allowing both parents equal access to such information is in the best interest of the children.

1. Information To Be Shared Between Parents. Parents exercising joint decision making authority shall share all information relating to the minor children's medical care, educational activities and records, and other legally significant needs, and shall make all decisions mutually relating to such matters. If the parents are unable to speak to each other, they shall use email to communicate such information. This obligation includes, but is not limited to, the following:

- a. School Records. Both parents have equal rights to inspect and receive the children's school records, and both parents are encouraged to consult with school staff concerning the children's welfare and education. Both parents are encouraged to participate and attend school events. Both parents shall be permitted to attend all extracurricular events and activities. Both parents should inform the school of the need to inform two parents separately and complete all necessary paperwork necessary for him/her to receive directly duplicate report cards, progress reports and general notices and information. Each parent should be an emergency contact for any school, camp, sports, activities or trips.
- b. Governmental Records. Both parents have equal rights to inspect and receive governmental agency and law enforcement records concerning the children.
- c. Health Care Providers. Both parents have equal rights to consult with any person who may provide care or treatment for the children and to inspect and receive the children's medical, dental or psychological records, subject to other statutory restrictions and Berg v. Berg, 152 NH 658 (2005). The parents shall cooperate with each other in sharing information related to the health and welfare of the children, to include updated contact information for each of the children's health care providers.

2. Parent-Child Telephone Contact. The children shall be permitted private, unimpeded and unmonitored telephone access with their parents during reasonable times and for reasonable durations with either parent. The children's right to call a parent shall not be

restricted, discouraged or punished in any way. A parent shall be permitted one ten-minute call by the parent to the children per day, absent emergency, but not later than 8:00 pm. When the children reach their teenage years this time shall be extended to 9:00 pm.

3. Parent Child Written Communication. The parents and the children shall have the unimpeded right to communicate in writing, by email, instant message, text message or the like, during reasonable hours and for reasonable durations. Such communications shall be limited to reasonable times and reasonable durations and shall occur no later than 8:00 pm until a child reaches his/her teenage years. When the children reach their teenage years this time shall be extended to 9:00 pm.

4. Parental Contact Information. Each parent has a continuing responsibility to keep the other parent informed of his or her actual residence address, mailing address, if different, home, cell, and work telephone numbers and email address. Each parent shall notify the other of any change in such information, within twenty-four (24) hours of such a change, in writing. This provision requires a parent to provide such contact information before travelling with the children on trips or vacations.

5. Travel Notification/Documentation. The parents shall provide notice of all travel plans involving the children at the time such plans are made and to include itinerary and contact information. The parents shall be entitled to speak with the children during vacations without restrictions or excuse. The parents shall timely cooperate to ensure that the children obtain and maintain child travel consent forms and passports before such travel. Each parent shall execute a child travel consent form within 3 days of a request for any travel to occur within the next 90 days. No parent shall unreasonably delay or withhold permission for the

children to travel internationally. Alexandra shall be responsible for holding the children's passports and other travel documents.

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

F. RELOCATION OF RESIDENCE OF A CHILD.

This parenting plan shall expressly govern the relocation of the children. RSA 461-A:12 shall not apply. The parties will work together to ensure a living situation that allows the children meaningful time with each parent and considers the best interest of the children's needs including education and mental health supports. If a disagreement arises as to the relocation of the children, the parties shall seek the assistance of a mediator before proceeding to court.

G. PROCEDURE FOR REVIEW AND ADJUSTMENT OF PARENTING PLAN.

The parents, Alexandra and Sean, shall meet to review and discuss the terms of this Parenting Plan and the well-being of the children as often as they deem necessary, rather than on a set schedule. Any agreed upon changes shall be written down, signed by both parents and filed with the court. Each parent shall retain a copy.

H. METHODS FOR RESOLVING DISPUTES.

In the future, if the parents have a disagreement about parenting issues or interpretation of or compliance with this Parenting Plan, or they seek to modify this Parenting Plan, the parents shall try to resolve their differences to accommodate the best interest of the children. If the parents are unable to work out a mutually agreeable resolution between

themselves, absent emergency, they shall seek the assistance of an agreed upon mediator before proceeding to court. Failing resolution or refusal to timely participate in discussion with a mediator, either parent may ask the court to decide the issue.

I. OTHER PARENTING AGREEMENTS.

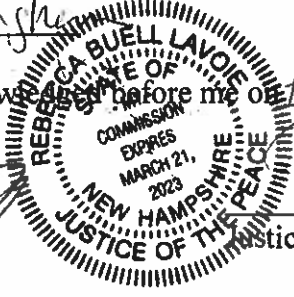
Not applicable.

Dated: August 5, 2019

[Signature]
Alexandra Rourke

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

This instrument was acknowledged before me on August 5, 2019 by Alexandra Rourke.



[Signature]
Justice of the Peace/Notary Public

[Signature]
Sean Rourke

STATE OF NEW HAMPSHIRE
COUNTY OF Rockingham

This instrument was acknowledged before me on Aug 5, 2019 by Sean Rourke.



[Signature]
Justice of the Peace/Notary Public

Drafted by:

Christine C. List, Bar No. 18954
Primmer Piper Eggleston & Cramer
900 Elm Street, 19th Floor
Manchester, NH 03105

RECOMMENDED:

Date: _____

Signature of Marital Master

Printed Name of Marital Master

SEP 12 2019

10th Circuit Court
Family-Portsmouth

Court Name: 10th Circuit - Family Division - Portsmouth

Case Name: In the Matter of Alexandra and Sean Rourke

Case Number: 670-2019-DM-254
(if known)

AGREEMENT

The parties agree as follows:

In response to the Order of Non-Approval dated 8/15/19, the parties submit the following responses for clarification:

With regard to Item #2, the disposition of marital property:

The parties will split future subdivision costs for the property in Costa Rica equally, if there are such costs in the future.

With regard to Item #6, the reasons for deviation from NH child support guidelines:

The Petitioner (Obligee) has significantly more (pre-marital) assets than the Respondent (Obligor) at the time of the support obligation calculation. The petitioner has the potential to earn a higher income (employed as a nurse) than the respondent (self-employed craftsman and manufacturer of custom surf boards) at this time. The parties feel the plan reflected in the Uniform Support Order optimizes the use of the parents' combined income to arrive at the best possible outcome for the minor children. The parties plan to revisit Child Support as circumstances change to ensure the support obligation remains fair and in the best interests of the parties' minor children.

With regard to Item #7, Parenting Plan and Schedule:

At this time, the Petitioner is living in the NH Seacoast area and the Respondent is living primarily in Costa Rica. The parties intend to exercise a flexible schedule based on the Respondent's time in the Seacoast and in Costa Rica. If the parties are not able to agree on a schedule based on circumstances, they agree to the following schedule(s):

During months that the respondent is in the NH Seacoast Area: at least one weeknight dinner/after school visit per week, and at least two weekends per month. These weekend visits shall include overnights if he has lodging/living arrangements that allow for overnight visits with his children. If he does not have lodging/living arrangements that allow for overnights with the children, he shall be entitled to spend the hours between 9 AM and 6 PM on Saturday and Sunday with the children during his weekends. If the

Date 9/11/2019

Plaintiff/Petitioner

Defendant/Respondent

Attorney for Plaintiff/Petitioner

Attorney for Defendant/Respondent

1 of 2
Agreement approved and incorporated into original Proposed stipulations also approved today / same date
9/13/19
John Rendell
AGREEMENT

SEP 12 2019

10th Circuit Court
Family-Portsmouth

Court Name: 10th Circuit - Family Division - Portsmouth

Case Name: In the Matter of Alexandra and Sean Rourke

Case Number: 670-2019-DM-254
(if known)

AGREEMENT

The parties agree as follows:

ROURKE ADDENDUM CONTINUED:

parties cannot agree on weekends, Sean shall be entitled to the first and third weekend of each month. Sean shall provide Alexandra travel dates with as much notice as possible, but at least 14 days.

It is anticipated that Alexandra will travel to Costa Rica somewhat frequently. During these times the parties agree that they will develop a flexible parenting schedule. In the event they are not able to agree on a parenting schedule in Costa Rica or times for the children to be in Costa Rica, Sean shall be entitled to a minimum of three non-consecutive weeks with the children in Costa Rica, to be exercised during school vacation weeks or summer vacation months. This three weeks will be in addition to the time he will spend with his children the the NH Seacoast area. The parties agree that the children shall be accompanied by a parent during all travel to and from Costa Rica.

The parties hope the information provided herein satisfies the court's need for the information requested in the Order of Non-Approval. It was drafted with the help of the mediator who helped them reach agreement on the initial terms of their divorce.

9/11/2019
Date

[Signature]
Plaintiff/Petitioner

[Signature]
Defendant/Respondent

Attorney for Plaintiff/Petitioner

Attorney for Defendant/Respondent

2 of 2
Approved: Incorporated into other stipulations
Approved on same date
9/13/19
[Signature]
AGREEMENT