Maine Supreme Judicial Court
Sitting as the Law Court

Docket No. Cum-24-71

Laudan Ghayebi,

Appellant,

v.

Omid Ghayebi,

Appellee.

On Appeal from the
Maine Superior Court, Cumberland County

APPELLANT'S BRIEF

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I. STATEMENT OF FACTS

A. Domestic Violence in the Marriage

The parties were married May 25, 2014. (Appendix 1 (hereinafter "A. _").) During the marriage, Laudan was the constant victim of her husband's physical and emotional abuse. The first instance of physical abuse occurred March 3, 2015. (Trial Transcript, Day 2, p. 195) ("D2/195")[1]

While in bed the evening of March 3, 2015, Omid informed Laudan he was going to obtain a babysitter for Sahra. Laudan questioned why a babysitter was needed when she was available to take care of Sahra. (D2/195) During the argument, Omid kicked Laudan very hard, causing her to jump out of bed. (D2/196) Laudan left the bedroom and when she tried to return, the door was locked. Laudan banged on the door. Omid exited the bedroom by an adjoining room through a closet, came up from behind Laudan and pushed her against the futon, and put his hands around her neck. (D2/197) Omid applied pressure to Laudan's neck, but not enough to block her airway. When Laudan was released, she called 911. The police arrived and spoke to Laudan. (D2/198) She informed the police she did not want to press charges because she was *afraid of* Omid's reaction. (D2/199)

Also in 2015, Omid cut Laudan's hand with a knife. Laudan was preparing dinner

[1] Trial occurred on three separate days: August 10, 2023 has been labeled by eScribers' as Day 1; August 15, 2023 is labeled Day 2; and August 28, 2023 is labeled Day 3. References to the daily transcript will be referred to as D1, D2, and D3.

for a large gathering. An argument developed while Laudan was cutting vegetables. Omid became agitated and Laudan felt threatened. (D2/217) Omid approached Laudan in a very intimidating way. Laudan responded "[d]o I need to have a - - a knife on me or something to protect myself?" Laudan, who had a knife in her hand, was pushed by Omid against the counter. Omid grabbed Laudan's hand and twisted the knife, cutting Laudan. (D2/217, 218)

In 2016, Laudan was pregnant and still working at UNE. (D2/218) One night, Laudan arrived home late after work. Omid informed her that he and Sahra had prepared dinner. Omid became very agitated because Laudan had not thanked Sahra for assisting in dinner preparation. (D2/219) After Omid's outburst, Laudan was going to retire to the back bedroom and bring her dinner with her. As Laudan was stating she was going to bring her food back to her room, Omid "put his hands around my neck, strangled me, and pushed me up against the wall." (D2/219) Laudan left the kitchen exhausted, scared and crying. (D2/220)

In the spring of 2016, while Laudan was pregnant, she was asking Omid about afterschool plans for Sahra. Omid would not respond and started giving Laudan the silent treatment. (D2/221) Uncharacteristically, after Omid dropped off Sahra at school, he returned home. When Laudan heard the garage door open, she hid in the closet, fearing Omid's reaction. (D2/222) Laudan went through the closet to the bathroom to avoid Omid. Omid caught her in the bathroom where he assaulted her. She testified Omid "[s]trangled me, pushed me against the wall, and I was pregnant at

that time and fearful for the baby." (D2/222) Like many abused women, when Laudan was finally released "[I] just apologized and said, whatever I did that was wrong, I'm sorry. Just let me go." *Id.*

B. Testimony of Nancy Behrouz

Nancy Behrouz ("Nancy") is Laudan's mother and Child 's grandmother. She and her husband moved to Maine in 2017 and purchased a home at 21 Fox Run Road in Falmouth to be closer to Laudan. (D3/68) After the marriage on May 24, 2014, Nancy moved into the Inverness Road ("Inverness") home in Falmouth with Laudan and Omid.

Nancy had a good relationship with Sahra. She would babysit, bake with Sahra, play with her, pick her up from school, and shop together. (D3/70, 71) Nancy testified Laudan also had a good relationship with Sahra. When Laudan spoke up about Omid's parenting of Sahra and his treatment of her, Omid usually became very defensive and angry. Nancy testified Omid "[s]tarted this narrative that Laudan was abusing Sahra and he triangulated them. He demanded Sahra not to talk to Laudan and that Laudan not to talk to Sahra." (D3/72, 73) Nancy testified that Laudan was never abusive to Sahra in any way. (D3/72, 73) While Omid claimed Laudan was abusive, Omid still relied on Laudan to watch and take care of Sahra. (D3/73) Omid told Laudan it was his house and she had to follow his rules. (D3/74) Omid did not permit Laudan to be in the same room as Sahra. (D3/74) Nancy described Omid's shifting directives as very much like a rollercoaster. (D3/73)

Nancy described Omid as being very charming and caring in the beginning. However, he became very disrespectful to Laudan, hostile, belittled her in front of the kids, mocked her and badgered her about all the things he did not like about her. (D3/74) He constantly put her down and judged her and became very cruel. She described everyone walking on eggshells to navigate around Omid's temper and rages. (D3/75) Nancy testified, "He had - - it was a chronic temper. He raged and yelled and swore. He was very vulgar, and he was angry. We never knew when he was going to get angry. It was very tense." (D3/75) Omid constantly swore and belittled Laudan. According to Nancy, "[h]e would call her an asshole. He would tell her to shut the fuck up. He would call her a nigger. Sorry. That's a very derogatory word. He would constantly be calling her that. He would call her a fucking bitch. I mean just the whole gamut." (D3/75, 76)

Nancy described helping to plan for a party. Omid asked her to put a watermelon in the refrigerator, but it wouldn't fit. When she told Omid it would not fit, Omid "[j]ust raged and went off and started swearing. He was raging at Laudan about me and how stupid I was." (D3/76) Both Laudan and Nancy left the house and when they returned, they received the silent treatment from Omid. (D3/77) Nancy testified that she apologized to Omid. When asked why she would apologize, she responded, "Just to stop the tension and to stop the anger. . . ." (D3/77)

1. Nancy's Removal and Return to Inverness Road Home

Nancy was finally kicked out of Inverness by Omid in August of 2015. He asked her to assist him in carrying a heavy air conditioner upstairs. Laudan protested that it was too heavy for her mother. Omid carried the air conditioner up the stairs alone. When he came back down the stairs, he screamed at Nancy and told her she must leave the house in two weeks. Nancy described Omid in the "craziest rage." (D3/77)

Nancy returned to Inverness just before Child was born on October 6, 2016. After Child 's birth, Laudan, Nancy, and the baby all slept in the downstairs bedroom. Omid continued to triangulate Sahra and Laudan. She described an incident where Sahra and Omid were watching TV and Laudan inquired whether Sahra would like to do something with her the following day while Laudan was babysitting. Nancy testified, "And Omid became so angry and yelled at her and said, 'Don't talk to my daughter. You don't make decisions for her. I'll tell her where she goes and what she does, and you go through me. You don't talk to her.'" (D3/80) When asked what her reaction was, Nancy testified her reaction was just to shut down because it was so tense. (D3/81) Despite Omid's rages and irrational rules, when Laudan, Sahra, and Nancy were together without Omid they laughed and had a good time. (D3/81) Nancy characterized Omid's behavior as "[v]ery controlling and very demeaning." (D3/81)

Nancy testified that the Sunday after Child 's birthday in 2017, Laudan called frantically, stating Omid would not let her leave the house. (D3/82, 83) Nancy and her husband went to Inverness and observed Omid raging and very agitated, "[a]nd he was

telling us that he was a wolf in sheep's clothing, and he was saying very threatening things like that, and this was all going to end on Monday, and we better watch out, that this was going to - - this was all going to end on Monday." (D3/83) Laudan and Nancy went to the police station to report Omid's threatening behavior. (D3/84) The next day, Omid told Laudan and Child they had to leave. They moved in with Nancy and her husband at 21 Fox Run Road in Falmouth. (D3/84, 85)

2. Child's Behavior After Visits With Omid

Nancy described Child's behavior when visits resumed with his father after the August 31, 2020 Interim Order. (A. 73) She testified:

> When he came back home, he had really unregulated emotions. He would - - I mean, he still does that to this day, cry and just cry for no reason. Or I mean, he had a reason so he would just cry and cry and cry until he could regulate himself to stop. He was very aggressive. He would kick and swear and punch and slap Laudan in the butt and tell her to shut up. He told her to fuck-off a lot. He used that word. He was obsessed with guns and killing chipmunks. He became very agitated and nervous before visitations. Sometimes he said his stomach would hurt. . . .

(D3/89) In contrast, she testified that Child was never aggressive before contact visitation started with Omid, which began after the First Interim Order (08/31/20). Child never swore when living with her and Laudan at 21 Fox Run Road in Falmouth. It was entirely new behavior. (D3/90)

Nancy described Omid disciplining Child one night during their separation while Laudan and Child were living with her. Omid was invited for dinner. During dinner,

Child refused to eat all of his meat and Nancy described what happened:

> Omid aggressively grabbed him grabbed his arms and picked him up, and angrily put him for a time-out in our basement stairs. There was another time when he was force feeding him until Child was choking and crying, and so it was a few different times he gave very harsh time-outs - - harsh time-outs.

(D3/93)

After regular visitations with Omid resumed, Child began acting out physically and verbally with Laudan. After visits, Child would scream and cry, refuse to enter Laudan's home and otherwise lash out angrily. He used wrestling moves against his mother; one time putting her in a choke hold, and while in the car, he would kick her arm. (D2/240) These behaviors only started after the Interim Order. (D2/241) Child reported stomach pain, stomach aches, and constipation to his mother. Omid reported that Child would wet himself while in his father's care. (D2/277) Child also started kicking Laudan and spit in her face. (D2/278)

C. Economic Abuse 19-A M.R.S.A. § 4102(5)

1. The $250,000 Loan/Gift

After marriage, Laudan wanted to start a family. Omid demanded Laudan provide him $250,000 as "security" that she was not planning to leave the marriage. Laudan felt coerced, but wanted to demonstrate her commitment to the marriage and have a child. (D3/219, 220) On June 14, 2015, Laudan wrote a check to Omid in the amount of $250,000. (A. 260) The memo section contained a note stating, "Emergency

Protection." When asked during cross-examination whether he demanded $250,000 to have a child with Laudan, Omid claimed, "it was Laudan's idea" and he just "went along with it." (D1/240) Omid did admit that the $250,000 could be used only if Laudan left the state. (D1/241)[2] In his answers to interrogatories, Omid claimed the, "$250,000 was loaned then gifted to [him] from Laudan." (D1/239, 240)

Laudan testified she initially borrowed $250,000 from her parents to pay Omid. (D2/20) She repaid $200,000 of the loan to her parents from her savings maintained in a separate account earned prior to the marriage. (D3/20, 22) Omid admitted he did not know whether the $250,000 came from Laudan's premarital funds. (D1/242) He initially deposited the funds into a Bank of America account in his name and "ITF" (in trust for) Laudan. (A. 261) On January 1, 2016, he transferred the $250,000 to a Bank of America savings account in his name jointly with his daughter Sahra. (D1/248) (A. 269) When asked to explain the transfer to a joint account with Sahra, he asserted "I thought my life was in danger so I moved the money from one account to another account." (D2/22)[3] He then testified that he returned the $250,000 to the ITF account "after I felt safe." (D2/23)[3] Omid admits the $250,000 started as a loan. He asserted that the term of the loan was not two (2) years, as Laudan testified, but eighteen (18) years. (D2/30)

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[2] Laudan asserts the agreement is void *ab initio* because it violates basic public policy and human dignity.

[3] There are no facts in the record to support Omid's baseless allegation. This is a manufactured explanation to justify the transfer of $250,000 to a joint account with Sahra, as is his explanation of why he transferred the $250,000 back to Bank of America.

Omid was pressed on how the loan turned into a gift. He testified, "When Child was born, or when we conceived Child, I - - it became a gift." (D1/259) He then testified as follows:

> It became a gift. I don't - - from - - from that moment on, I agreed to pay off - - we agreed to pay off the mortgage, and that - - that was a gift to me. So we had an agreement to use the money to pay off the mortgage.

(D1/260)

Laudan sent Omid an email October 18, 2017, a week after Omid demanded she leave Inverness with Child. Laudan wrote:

> I know we recently discussed repayment of the $250,000 that I loaned you two years ago. I just wanted to follow up with you now to arrange for that repayment. As you know I borrowed the money from my parents. The agreement for that loan was two years without interest, so now that the terms of the loan have expired they are asking me for the money. This means I will need the $250,000 back from you so that they can be paid.

(Def. Ex. 140) Omid did not respond to the email. (D3/17) On February 2018, Laudan sent a second email demanding repayment of the loan. (See Def. Ex. 141) Omid had always assured Laudan "[y]ou will get your land money back . . . ." (D3/24)

D. The First Protection From Abuse Complaint

On November 18, 2021, Laudan filed a complaint for protection from abuse that was consolidated with the final divorce hearing. (A. 295) In her PFA Complaint, Laudan alleged Omid forcibly engaged in sex without her consent, all three times while the children were present. During the first incident, Laudan and Omid were spending a

weekend in Boston. There were two beds in the room and Sahra was occupying one bed watching cartoons on the TV. (D2/225) Laudan was laying on the other bed when Omid got into bed and whispered to her he wanted to have sex. Laudan refused because Sahra was in the room. Omid kept insisting and eventually "[h]e just put his hand over my mouth and proceeded to take my pants down and insert himself." Omid entered Laudan from behind.

Omid forced himself onto Laudan on two other occasions while living at Inverness. Laudan and Child occupied a bedroom upstairs next to Omid who slept in the master bedroom. Child was in bed with Laudan after breastfeeding. She was comforting him. (D2/226) Omid insisted on sex, Laudan refused, and he again covered her mouth and forced himself from behind. *Id.* All three instances are documented in the supplement filed along with the PFA Complaint. (D2/235) (Def. Ex. 55)

1. Sheetrock Screws In Omid's Driveway

The most shocking abuse against Laudan occurred when Omid deliberately deployed sheetrock screws, mounted on Styrofoam and glued to the pavement in his driveway when Laudan picked up Child. (D2/278) Omid had a history of blocking the driveway so Laudan could not enter by placing tree branches or his vehicle at the very end of the driveway. (D2/279) (*See* Def. Ex. 117, photograph of tree blocking driveway) The tree forced Laudan to park on the street. However, on November 12, 2021, Omid had pulled his car back, leaving a small space for Laudan to pull in the driveway. (*See* Def. Ex. 110) Laudan had previously expressed concerns about

her and Child 's safety when parking on the street while picking up Child . This occasion was the very *first* time there was room for Laudan to pull into the driveway. (D2 278) Laudan pulled into the small driveway opening, picked up Child , and returned to her parents' home.

Three days later, Laudan was again preparing to pick up Child . (D2/281) Her car was in the garage for those three days, and when Laudan went to drive to the exchange, she realized she had a flat tire. Laudan introduced a photograph showing a sheet rock screw embedded into her tire with a piece of plastic at the end of the screw. (*See* Def. Ex. 111) (D2/282) Laudan, with the assistance of her father, removed the screw from her tire and took a closeup photograph. (A. 292)

On November 16, Laudan again picked up Child at the Lakeside property where Omid lives. Suspicious, she parked on the street and walked to the driveway with a flashlight. (D2/282-283) Laudan discovered 6 sheet rock screws in the small opening Omid left for her to park at the end of his driveway. Each screw had a base of plastic glued to the pavement with sharp pointed ends facing up. (A. 293, 294)

Nancy accompanied Laudan to pick up Child on November 16. (D3/11) When she discovered more screws glued to the driveway, she hollered to her mother who came out to look and then Laudan called the police. During this time, Omid accompanied Child to the end of the driveway and when Child saw his mother, he started running and stepped on one of the sheet rock screws. Laudan immediately went to Child to check his feet. (D3/12) Omid then came over to look at the sheet rock

screws. When he touched one of the screws and tried to bend it over, it was glued to the ground. (D3/13) Laudan's mother hollered at Omid not to touch the screws. When Omid was informed the police were coming, Laudan testified "I just remember his face just went kind of blank and, like, panic mode from what I could interpret. And he quickly ran back to the garage." (D3/13) Omid stayed in the garage until the police arrived. The police interviewed Omid who denied gluing the screws to the driveway. Laudan overheard Omid tell the police to "please keep the report neutral," explaining that he was in the middle of a contentious divorce. (D3/15) The circumstantial evidence here that Omid planted the screws is overwhelming.

E. Omid's Motion For Contempt

In January 2022, Laudan and her mother moved to New York for two reasons: 1) pipes in her mother's house froze and the house became uninhabitable, and 2) her employer required her to be on-site at Columbia University three (3) days per week. (A.24) (Def.'s Response to Plaintiff's Motion For Contempt, ¶ 9A) Laudan attempted, but Omid refused to have contact visits with Child in New York. (*Id.*, ¶ 20) Laudan's dilemma was complicated because she did not own a car and used her mother's vehicle for transportation. (*Id.*, ¶ 19)

The Court found Laudan in contempt despite the fact she had no place to live in Maine and had no vehicle to return to Maine. (A. 24) In its Order, the Court noted Laudan was authorized to travel to New York during her scheduled time with Child. (A. 16) (Agreed To Interim Order (Najarian, M.) dated July 7, 2021, at 3) A second

Interim Order was issued December 28, 2021 (A. 20) allowing Laudan to live in New York to meet her on-site work commitments provided she return to Maine for Omid's contact visitation. (Order on Motion For Contempt, pp. 7, 8) The Court acknowledged that while in New York Laudan had no car and the Falmouth home was uninhabitable due to frozen pipes. (A. 93) The Court ordered 31 make-up days for Omid, but the "Court declines to change primary residence [to Omid] *at this time*. . . ." Laudan complied with the make-up schedule and contact schedule since April 29, 2022. (A. 24) At trial, she testified she would honor and follow any visitation schedule ordered by the Court, (D3/322), and will respect and facilitate Child 's relationship with his father. (D3/314)

F. The Testimony of Susan Benjaminsen, LMFT

Benjaminsen is a licensed marriage and family therapist who provided counseling to Laudan, (D2/247), and treated her between May 2021 and June 2022 for symptoms related to domestic abuse and violence. (D2/253) The psychoeducation component of counseling involved the Duluth Model of the Power and Control Wheel. (D2/254) The Power and Control Wheel is a well-accepted methodology regarding imbalances of power and control in a relationship. (D2/254, 255)

The treatment plan is summarized in Defendant's Exhibit 49. Her diagnosis was described as follows:

> Laudan has a documented DSM-V diagnosis of post-traumatic stress disorder *related to the domestic violence she experienced in her marriage*. She continues to experience diagnosis related symptoms that interfere with her emotional/behavioral health, which are exacerbated by the

> significant life stressors of divorce proceedings and child custody issues. Even though her coping skills and strategies to manage her current symptoms are increasing, there is evidence of the probability of emotional/behavioral deterioration without continued treatment. Laudan's support at home is limited, but she is stable enough to function and continue to benefit from this level of care. (italics ours)

(Def. Ex. 49) Laudan was treated for depression, anxiety, feelings of disconnection, self-doubt and second-guessing herself. (D/2 256) Laudan's therapy is further described in her therapy notes. (Def. Ex. 47, 48) (D2/256/257)

Laudan also sought help from Benjaminsen regarding Child 's aggressive behavior towards her – hitting, kicking, and choking. (D2/257) Child had not displayed this behavior until after contact visits resumed with Omid. (D3/89)

1. Evaluation of Omid Ghayebi

Magnuson spoke to Laudan's former therapist, Sandra Eagle, and read her treatment reports. Magnuson noted in her report that Eagle reported Child *did not* like visits with his father. (D3/47) Eagle also reported to Magnuson that Child did not understand why his father touches his penis. (D3/47) Eagle described Laudan as a good mother. (D3/48)

Magnuson interviewed another therapist, Mahin Pouryaghma, Ph.D. Pouryaghma engaged Laudan and Omid in couples sessions discussing intimate partner violence. According to Pouryaghma's email, when intimate partner violence was raised Omid walked out of the session. (D3/48)

Magnuson reported the AAPI suggested Omid was "authoritarian" and "sort of expects obedience from his child." (D3/41) She observed "boys grow up believing themselves to be superior to girls" and that "western methods of discipline such as withholding favorite food or sending children to their rooms, are rarely used." (Def. Ex. 108, p. 18) These results are in line with Omid's Iranian culture. She described it as follows:

> I think it's worth noting as what was described in the AAPI was – appeared to me to be somewhat consistent with what the reading of the Iranian culture that I did, so that is less of a personality issue and more of a cultural issue. I think that's just worth noting.

(D3/50) She described the cultural factor as expecting obedience from children and expecting the father not to be nurturing. The other cultural factor is that in the Iranian culture <u>males are dominant as opposed to females</u>. (D3/50) (emphasis ours)

G. <u>Testimony of the Guardian Ad Litem</u>

In her last interview with Child in December 2022, Child stated he misses his mom and would like to spend less overnights with his father. (D3/338) Child also told his therapist, Heather Parlin, that he is more comfortable at his mother's house. In Child 's last session with Heather Parlin on December 30, 2022, corresponding to the date of the GAL's last interview, Child stated:

> Child often states that he is more comfortable at maman's house. Today he said that the first day he is with baba, baba

> is nice but after that he yells a lot[4] and that is why sleepovers are hard. Child was praised for talking about things that are hard for him. (emphasis ours)

(Def. Ex. 49A)[5] Parlin's report of Omid yelling is consistent with Nancy's testimony that Omid "yelled a lot" and was "very controlling and very demeaning." (*Infra* p. 6)

The GAL recommended shared equal parenting. (D3/343) The equal parenting schedule would result in Laudan losing her job at Columbia University. The GAL testified that Laudan could keep her job (requiring her to be on site 3 days per week) and just see Child weekends. (D3/344) The GAL did not make any transportation recommendations, claiming that it was not within the scope of her appointment.

Laudan is employed as a project manager for curriculum development education and training in the field of emergency preparedness at Columbia University. (D2/181) Laudan resumed working at Columbia University in January of 2021. Deposition of Thomas Chandler, 10/16/2022, p. 7 ("Chandler Depo.") (Def. Ex. 93A). Chandler is the deputy director of the National Center for Disaster Preparedness at Columbia University and Laudan is direct supervisor. (Chandler Depo. pp. 4, 7) Columbia has a policy that employees must be present at Columbia at least three (3) days a week. During COVID, most work was virtual. (Chandler Depo., p. 9) Chandler identified Deposition Exhibit 1 as an email he sent to Laudan in September of 2021 stating she needed to be

[4] Child 's report to Heather Parlin that Omid "yells a lot" is consistent with Nancy Behrouz's testimony that Omid had a "chronic temper" and "yelled a lot." *Infra* pp. 3, 4.

[5] The parties stipulated that Heather Parlin's counseling notes up to December 2022 would be admissible. (D1/9)

onsite for training, teaching opportunities, and other projects by July 1, 2022. (Chandler Depo., p. 12)

H. Reunification and the Purchase of 53 Lakeside Avenue

Laudan and Omid were separated from October 9, 2017 until she returned to Inverness February 2019. (Def. Ex. 136) The parties had purchased 53 Lakeside Drive ("Lakeside") October 31, 2018. The property was undergoing renovations after the purchase so the couple still lived at Inverness Road until it was sold in August 2019. Laudan returned to live with her parents until February 2020 when she moved into Lakeside with Child .

The Court found Laudan's $250,000 loan/gift was comingled in Omid's Edward Jones account. (A. 68, ¶ 37) Laudan agreed to allow Omid to use her $250,000 to purchase Lakeside provided her nonmarital funds were returned to her when Lakeside was sold. (D3/23, 217) Laudan testified it was always her agreement with Omid she would get her $250,000 back and then split the remaining proceeds with Omid. (D3/24, 217)

II. PROCEDURAL HISTORY

Omid filed his Complaint For Divorce February 14, 2020. Laudan filed her Answer and Counterclaim June 29, 2020. The parties filed competing Motions Pending and the first interim hearing was held August 10, 2020 with an Interim Order August 31, 2020. (A. 73) The Interim Order established shared parental rights and responsibility, established Laudan as Child 's primary residence, and set visitation with

Omid on Tuesdays and Thursdays from noon to 6:00 p.m. and on Saturdays from 9:00 a.m. to 6:00 p.m.

A guardian ad litem was appointed November 23, 2020. (A. 18) Both parties filed Motions to Modify the Interim Order. (A. 6-8) On July 7, 2021, the parties entered into an Agreed-To Interim Order expanding Omid's visitation that included limited overnight visitation. (A. 17) On May 5, 2022, the Court entered an Order finding Laudan in contempt and ordering 31 make-up days. (A. 24)

The final interim hearing was held December 10, 2021 to address interim contact. (A. 20) The Magistrate modified the GAL's recommendations (every Wednesday 10AM to Thursday at 6PM) by eliminating Wednesday overnights to allow Laudan to meet her employment obligations at Columbia University. Laudan filed a motion to modify transportation responsibilities between Maine and New York. The Court denied her motion June 1, 2022. (A. 26)

The final hearing was held on three separate days: August 10, August 15, and August 28. (A. 23) The Court issued its Divorce Judgment and Findings of Fact and Conclusions of Law November 17, 2023. (A. 34, 35)

Laudan filed a Motion to Alter and Amend the Divorce Judgment and a Motion For Further Findings of Fact. (A. 117, 125) The Court issued an Order denying Defendant's post-trial motions January 24, 2024. (A. 36)

III. STANDARD OF REVIEW

"The trial court's factual findings are reviewed for clear error." *Boyd v. Manter*, 2018 ME 25, ¶ 5. The trial court's recommendations regarding parental rights and division of the marital estate are reviewed for abuse of discretion. *Wechsler v. Simpson*, 2016 ME 21, ¶ 12, 131 A.3d 909, citing *Young v. Young*, 2015 ME 89, ¶ 5, 120 A.3d 106 ("[w]e review factual findings for clear error and the ultimate conclusion concerning the child's best interest and rights of contact for an abuse of discretion.").

After the Court issued its Divorce Judgment, Laudan filed a Motion For Findings of Fact and Conclusions of Law. (A. 125) "We review a trial court's denial of a motion for finding of facts for an abuse of discretion." *Dalton v. Dalton,* 2014 ME 108, ¶ 21, 99 A.3d 723. Because Laudan filed a motion for findings of fact, "We cannot infer findings from the evidence in the record." *Ehret v. Ehret*, 2016 ME 43, ¶ 9, 135 A.3d 101.

Interpretation of statutes, including Title 19-A, as well as questions implicating constitutional rights, are legal issues reviewed *de novo*. *Light v. D'Amato*, 2014 ME 134, ¶ 23, 105 A.3d 447.

IV. ARGUMENT – PARENTAL RIGHTS

A. The Court Failed to Consider or Explain Application of the Best Interest Factors.

A divorce court shall apply the standard of "the best interest of the child" and "shall consider" a list of factors set forth in the statute. 19-A M.R.S. § 1653(3), *Whittemore v. Whittemore*, 2023 ME 3, ¶ 3, 288 A.3d 799. "The findings should . . .

'demonstrate that the court considered the best interest factors by expressly analyzing [those] factors most relevant under the circumstances presented by the case.'" Levy, Maine Family Law § 6.3(2)(A) at 6-14 (8th Ed. 2013). "The court has a duty to make findings sufficient to inform the parties of the reasoning underlying its conclusion and to provide for effective appellate review . . . ." *Grant v. Hamm*, 2012 ME 79, ¶ 13, 48 A.3d 789.

The Court's Finding of Fact and Conclusions of Law do not reference the best interest factors nor attempt to explain how the Court evaluated the best interest factors applicable to this case. (A. 64) The Court only made one conclusory reference to a best interest factor – that Laudan did not facilitate frequent and meaningful contact with Omid and that she was found in contempt for withholding contact with Child prior to final hearing. (A. 65, ¶ 14) Like in *Whittemore*, neither the findings nor judgment contained any reference to the factors as a whole or to any factor in particular, and no indication of how the evidence relevant to any factor supports the court's parental rights, residence, and parental contact determinations. *Whittemore*, 2023 ME 3, ¶ 9, 288 A.2d at 6. The Court failed to even acknowledge in its findings that there was a pattern of domestic violence throughout the marriage and substantial evidence that there was a significant impact on the best interest of Child . 19-A M.R.S. § 1653(3)(L)[6] There was no evaluation concerning how the abuse affected Child emotionally or impacted his

[6] 19-A M.R.S. § 1653(3)(L) provides "The existence of domestic abuse between the parties, in the past and currently, and how the above affect: 1) the child emotionally, 2) the safety of the child . . . ."

safety.

Inexplicably, the Court also failed to evaluate or comment on an ongoing pattern of economic abuse where Omid clearly took financial advantage of Laudan during the marriage. 19-A M.R.S. § 953(1)(D) (Economic abuse by a spouse) Omid manipulated Laudan's dependency and desire to have a child to enrich himself with a $250,000 "gift." Yet the Court totally ignored the interconnection between domestic violence, economic abuse, and its impact on Child . (A. 64)

Finally, there was no discussion or explanation in the parental rights award indicating the Court considered Laudan's relocation to New York for purposes of employment or what impact it would have on Child . The Court's findings are silent on the potential negative impacts on Child when Laudan is forced to commute from her job in New York weekly in order to exercise shared *weekly* parental rights. *See Gooley v. Fradette*, 2024 ME 3, ¶ 17, __ A.3d __ ("[w]e recognize that Fradette intends to relocate to Massachusetts and acknowledge that requiring Fradette to transport the children from Massachusetts to Portland each Wednesday could negatively impact the children's best interest.") The *Gooley* court stated "Requiring that Fradette make these mid-week trips from Massachusetts to Portland could impact Fradette's employment opportunities; the stability of Fradette's house . . . ." *Id.* Gooley was remanded for an express reconsideration of these relocation considerations. The silence of the Court in each of the above crucial areas will be discussed in detail below.

Laudan filed a motion for further findings after the Court issued its judgment. (A. 36) "After the entry of a judgment, if an affected party timely moved for findings pursuant to M.R. Civ. P. 52, the trial court must ensure that the judgment is supported by express factual findings that are based on record evidence, are sufficient to support the result, and are sufficient to inform the parties and any reviewing court of the basis for the decision." *Ehret v. Ehret*, 2016 ME 43, ¶ 9, 135 A.3d 101. However, "[w]hen a motion for findings has been [timely] filed and denied, we cannot infer findings from the evidence in the record." *Douglas v. Douglas*, 2012 ME 67, ¶ 27, 43 A.3d 695. "In these circumstances, if the judgment does not include specific findings that are sufficient to support the result, appellate review is impossible and the order denying findings must be vacated." *Id.* The Court inexplicably failed to issue specific findings of fact as required by Rule 52(a). *In re Children of Billie S.*, 2024 ME 1, ¶ 8, 307 A.3d 1046, *see also Narowetz v. Bd. of Dental Practice*, 2021 ME 46, ¶ 17, 259 A.3d 771.

B. The Court Failed to Explain Why It Allocated Sole Educational Decision-Making to Omid

In *Seymour v. Seymour*, 2021 ME 60, 263 A.3d 1079, this court reversed where the trial court "[f]ailed to explain why it allocated final decision-making authority on all educational and medical issues to [mother]." *Id.*, ¶ 27. *Seymour*, like here, involved a case where the court denied the father's motion for further findings. This court stated, "Thus the trial court was required to ensure its decision included express factual findings sufficient to inform the parties and us of the basis for the decision. *Id.* at ¶ 26.

The Court, *without a request from either party*, allocated Omid sole rights over Child 's education. The Court offered no explanation for this allocation. (A. 64-70) No doubt, it was a short-hand method to keep Child in Maine without explaining its impact on Laudan or Child . Essentially, the Court ignored Laudan's historical and essential role as Child 's primary caregiver and awarded Omid sole educational decision-making to make it impossible for Laudan to relocate and continue her job at Columbia University.

C. The Court's Findings are Clearly Erroneous - Omid's History and Pattern of Domestic Abuse

The Court's limited factual findings are clearly erroneous. A finding of fact is clearly erroneous when: (1) no competent evidence supporting the finding exists in the record; (2) the fact finder clearly misapprehended the meaning of the evidence; or (3) the force and effect of the evidence, taken as a whole, rationally persuades us to a certainty that the finding is so against the great preponderance of the believable evidence that it does not represent the truth and right of the case. *Wells v. Powers*, 2005 ME 62, ¶ 112, 873 A.2d 361.

The trial court ignored and made no findings regarding testimony from Nancy Behrouz of an on-going pattern of severe emotional abuse. According to Nancy, Omid "became very disrespectful to Laudan, hostile, belittled her in front of the kids, mocked her and badgered her about all the things he did not like about her." *Infra* pp. 3-6 Omid had a "chronic temper," would call Laudan an "asshole" and tell her to "shut the fuck up." *Id.* He had fits of rages against Laudan and Nancy. Similarly, the Court ignored

Laudan's testimony, with explanation, of physical and emotional abuse by Omid. *Infra* pp. 1-3.

The domestic violence continued when the evidence clearly established Omid glued sheetrock screws to his driveway, endangering Laudan and Child . Omid blocked his driveway so Laudan could not enter during transition of Child . (D2/279) (*See* Def. Ex. 117, photograph of tree blocking driveway) On November 12, Omid left a small space for Laudan to pull in for the very first time. Three days later, she discovered a flat tire and removed a sheetrock screw from her tire. (D2/242) (A. 291)

On November 16, Laudan returned to pick up Child . However, she parked on the street and walked to the driveway to discover six sheetrock screws glued to the driveway. (D2/282-283) (A. 293, 294) At this time, Omid and Child were walking to Laudan, Child ran to Laudan and stepped on a sheetrock screw. Luckily, he was uninjured. (D3/12) Omid denied placing the screws, but logic and common sense yield no other conclusion.

The trial court ignored and made no finding regarding Susan Benjaminsen's diagnosis of Laudan with "a documented DSM-V diagnosis and post-traumatic stress disorder related to the *domestic violence* she experienced in the marriage" and her treatment for depression, anxiety and feelings of disconnection . . . ." *Infra* pp. 13-14.

The Court ignored and made no findings regarding the impact of Omid's chronic temper and behavior on Child . Nancy and Laudan testified Child 's behavior changed significantly after overnight contact visitation with Omid resumed after the August 31,

2020 Interim Order. *Infra* pp. 6-7. When Child returned from visits, he would "[j]ust cry and cry for no reason" and he was very aggressive, he would "kick, swear, punch and slap Laudan in the butt and tell her to shut up." (D3/89) In contrast, he was never aggressive with Laudan before this.

And the Court never mentioned mandatory consideration of economic abuse of a spouse. 19-A M.R.S. § 953(1)(D). Despite shocking testimony that Laudan paid Omid $250,000 as security to have a baby, the Court concluded "Without evidence of a signed agreement, the Court must treat this money as a gift by Defendant of nonmarital money . . . ." (A. 67) These were the overriding factual issues in this case and the Court was silent. Laudan deserves to have findings on these issues that also significantly impact Child . Taken as a whole, the lack of findings is so against the great preponderance of the believable evidence that it does not represent the truth and right of the case.

Essentially, the Court's only best interest conclusion, without supporting findings, ("Laudan does not encourage frequent and meaningful contact" referencing the contempt order), punishes Laudan for her good faith attempt to protect Child . Her PFA complaint against Omid pitted her with another Hobson's choice – do nothing to protect Child or risk the Court focusing on this sole factor to determine her future parental rights. There was abundant record evidence to substantiate domestic violence. Further, consideration of the best interest factor ignores Laudan's testimony that she would facilitate contact (D3/314) and abide by this Court's parenting order. (D3/322)

The Court made no findings with respect to the long history of domestic abuse. The Court is statutorily required to consider how domestic abuse, past or currently, affects the child emotionally and the child's safety. 19-A M.R.S. § 1653(3)(L) The Court must also consider any history of child abuse by a parent. 19-A M.R.S. § 1653(3)(M) The Court did not discuss, it did not even mention, these critical facts and how they impacted Child 's best interest. There is overwhelming evidence of domestic violence as summarized in the Statement of Facts, pp. 1- 21, *supra.*

The only finding by the Court with respect to Omid's dangerous behavior in spiking his driveway related to the November 18, 2021 PFA complaint that was consolidated with the final divorce hearing. (A. 295) A temporary PFA order was granted by the Court including Child . The Court concluded Laudan did not prove evidence of abuse by a preponderance of the evidence. (A. 66, ¶ 27) Separate and apart from the PFA, Laudan and Nancy's testimony retains independent significance with respect to the statutory best interest factors that are not encompassed in the Court's conclusory statement that Laudan failed to meet her burden of proof in the PFA, especially the Court's statutory duty to assess domestic violence and economic abuse. 19-A M.R.S. § 1653(3)(L)

1. Impact on Child

The statutory best interest factors require the Court to evaluate the existence of domestic violence and its impact on Child both emotionally and from a safety

perspective. 19-A M.R.S. § 1653(3)(L) Yet the Court made no findings with respect to domestic violence or its impact on Child . (A. 64) There was abundant evidence that Child was negatively impacted and harmed by his father's abusive behavior as follows:

1. The Court's shared parenting Order requiring Laudan to commute to New York to exercise her parental rights, ignored the fact that she had been the primary caregiver to Child since birth. Child lived exclusively with Laudan and his grandmother, Nancy, between October 9, 2017 and February 2019 (15 months), August 2019 through February 2020 (6 months) and from July 2020 to the date of divorce (33 months). (Def. Ex. 136, Timeline) Indeed, in its Interim Order of August 31, 2020, the Court noted "There was no evidence to suggest that the parties have ever practiced shared parental rights and responsibilities. . . ." (A. 75) Primary residence was awarded to Laudan. (A. 76, 77) The Interim Order concluded "Laudan and Child have spent much of the marriage living apart from Omid. Laudan is clearly Child 's primary caretaker." The Interim Order also raised serious questions about Omid's care noting, "Moreover, Omid has his own issues related to Child 's bedtime as Omid testified that he lets a 3-year-old stay up until 1 AM and Omid appears to have only a rudimentary understanding of disciplinary options for very young children." (A. 76)

2. Laudan testified that after regular visitations with Omid commenced, Child began acting out physically and verbally towards her. After visits, Child would scream and cry, refuse to enter Laudan's home and otherwise lash out angrily. He would use wrestling moves against his mother; one time putting her in a chokehold while in the car and also kick her arm. Child had physical reactions to visitations with his father and reported stomach pain, stomach aches and constipation. (*Infra* p. 8) (D2/240)

Further, according to Dr. Magnuson, Omid's demeaning emotional abuse of Laudan is also consistent with his Iranian culture, "expecting obedience" and "expecting the father not to be nurturing." (Def. Ex. 108, p. 18) Most troubling, in the Iranian culture "boys grow up believing themselves superior to girls" and that "males are dominant as opposed to females." (D3/50) (Def. Ex. 108, pp. 18, 19) The Court

ignored substantial testimony that Omid had a negative impact on Child 's care and safety. The Court's findings are shockingly silent on these critical issues. The Court's conclusions are not "supported by express factual findings that are based on record evidence, are sufficient to support the result, and are sufficient to inform the parties and any reviewing court as the basis for the decision." *Ehret*, 2016 ME 43, ¶ 9, 135 A.3d at 104.

D. The Court Ignored Omid's Economic Abuse of Laudan

The Court is required to consider economic abuse by a spouse with respect to the disposition of property. 19-A M.R.S. § 953(1)(D)[7] A substantial part of Omid's economic abuse of Laudan involved manipulating and coercing Laudan to provide him $250,000 as "security" to have a child. (D3/219) (A. 260) The $250,000 was borrowed from her parents and repaid ($200,000) to her parents from her savings maintained in a separate account prior to the marriage. (D3/20, 22) Omid testified, if you can believe it, as follows, "When Child was born, or when we conceived Child , I - - it became a gift . . . ." While Omid initially testified it was a loan, (D1/239, 240), it apparently transmuted into a quarter million dollar "*gift*."

[7] Economic abuse is defined in Section 4201 as:

> Causing or attempting to cause an individual to be financially dependent by maintaining control over the individual's financial resources, including but not limited to, unauthorized or coerced use of credit or property, withholding access to money or credit cards, forbidding attendance at school or employment, stealing from or defrauding an individual of money or assets, exploiting the individual's resources for personal gain of the defendant or withholding physical resources such as food, clothing, necessary medication or shelter.

The Court totally ignored and made no findings regarding this entire line of testimony regarding economic abuse involving the loan/gift. Omid required Laudan to pay rent to live in the marital home (at $1,065 per month) plus utilities/living expenses. (D1/147) They had no joint checking account, no joint savings, no joint credit cards, and filed tax returns separately. (D2/210) Laudan was forced to shoulder all of Child 's living and medical expenses. Omid was ordered to contribute 60% to uninsured medical expenses, but refused to pay his court-ordered share. (*See* Def. Ex. 131G) Yet none of this testimony was ever evaluated by the Court.[8]

E. Laudan's Relocation to New York

On January 1, 2021, Laudan took a job at her old alma mater, Columbia University. She earned her undergraduate and graduate degrees from Columbia and spent seven years working at Columbia. Laudan is currently employed as a project manager for curriculum development education and training in the field of emergency preparedness. (*Infra* p. 8) During the pandemic, her work was remote. Her supervisor, Thomas Chandler, testified that Laudan must be present at Columbia University at least three days a week by July 1, 2022 or risk losing her job if she does not meet the on-site requirement. (Def. Ex. 93A, p. 12)

The Court's shared parenting order leaves Laudan with a Hobson's choice – she either assumes an unreasonable and costly burden of driving between New York and

[8] Laudan contends the agreement to provide $250,000 is void *ab initio* as a violation of public policy and human dignity. *Infra* at 44.

Maine every week or sacrifices her parental rights.

Relocation must be decided based on a "current assessment" of the child's (not the parents') best interest. *Malenko v. Handrahan*, 2009 ME 96, ¶ 24, 979 A.2d 1269. "A balancing of rights and interests must be undertaken in the context of the case, with full consideration of the child's best interest." *Light v. D'Amato*, 2014 ME 134, ¶ 22, 105 A.3d 447. When parental relocation is at issue, a balance must be struck between "a custodial parent's right to engage in interstate travel and to decide where the parent and child will reside, and a non-custodial parent's right to have continuing and meaningful parent-child contact with the child." *Malenko v. Handrahan*, 2009 ME 96, ¶ 24, 979 A.2d 1269. The Court's findings contain no evaluation of the child's best interest or the delicate balancing of Laudan's historical primary caregiver role.

In *Low v. Low*, 2021 ME 30, 251 A.3d 735, the court found it was in the child's best interest to remain in the primary custodial care of his mother even though she moved to Texas. Essentially, the court found that the transition away from the mother would be more detrimental to the child than transition away from the father. *Low*, 2021 ME 30, ¶ 7. The trial court's decision was upheld because "[t]he court carefully considered the right of each parent to have contact with the child and conducted an extensive best interest analysis." *Id.*, ¶ 10. Here, the Court performed no such analysis when removing Child from his primary historical caregiver. We do not know what best interest factors the Court found, how they were evaluated or why Laudan's relocation was never even acknowledged in the Court's findings.

V. ARGUMENT – PROPERTY DISTRIBUTION

A. The Court Abused Its Discretion in the Valuation and Distribution of Marital Property

The court's division of marital property is reviewed for an abuse of discretion. *Wechsler v. Simpson*, 2016 ME 21, ¶ 12, 131 A.3d 909. The court's factual findings are reviewed for clear error. *Boyd*, 2018 ME 25, ¶ 5. In its division of property, the Court did not prepare any tables showing the distribution of marital property. "Such a table is valuable to the parties and facilitates appellate review because it demonstrates that the court considered the overall allocation of property and debts and understood the ultimate effect of the divorce judgment." *Bond v. Bond*, 2011 ME 24, ¶ 19, 17 A.3d 1219. The court must display the property distribution in table form and explain its rationale for the ultimate distribution of the parties' marital estate. *Ehret*, 2016 ME 43, ¶ 18.

A glaring impact of the Court's failure to consider the overall distribution is the Court's failure to distribute $74,500 of personal property the Court awarded to Omid. (A. 68, ¶ 39) In addition, the Court erroneously concluded the "marital portion" of the parties' financial accounts is "unknown." (A. 69, ¶ 46) In fact, the parties' Financial Statements indicated all of the financial accounts are marital property. (A. 192, 216) The total value of the undistributed marital property is $95,266 (personal property ($74,500); financial accounts ($20,766)).

B. The $250,000 Loan/Gift Violates Public Policy And Is Void

A court's conclusions of law are reviewed *de novo*. *Est. of Martin*, 2008 ME 7, ¶ 18, 938 A.2d 812. The court will not enforce contracts, or their provisions, that contravene public policy. *See, e.g.*, *Court v. Kiesman*, 2004 ME 72, ¶ 11, 14, 850 A.2d 330. "A contract is against public policy if it clearly appears to be in violation of some well-established rule of law, or that its tendency will be harmful to the interests of society." *Allstate Ins. Co. v. Elwell*, 513 A.3d 269, 272 (Me. 1986). In order to determine whether a contract violates public policy, "we balance the freedom of the parties to contract against the detriment to society that would result from [its] enforcement." *State Farm Mut. Auto Ins., Co. v. Koshy*, 2010 ME 44, ¶ 42, 995 A.2d 651. "In light of the Maine Legislatures similar, well-defined policy that courts must discern the best interest of the child in matters involving parental rights and responsibilities, [citations omitted], we agree that a provision in a premarital agreement that may hinder the court's ability to assess and address issues regarding the best interest of a child, including a provision that could negatively affect a party's right to litigate such issues, is void and unenforceable." *Riemann v. Toland*, 2022 ME 13, ¶ 39, 269 A.3d 229.

Clearly, the $250,000 paid to Omid to provide "security" to have a child violates public policy and is void *ab initio*. Regardless of Laudan's subsequent agreement to use the $250,000 to pay off the Inverness mortgage and later to apply as a downpayment for Lakeside, the original agreement is void as a matter of law and is offensive to human dignity. This Court should play no part in enforcing this truly degrading transaction.

The money should be returned to Laudan. The analysis is similar to the doctrine of "fruit of the poisonous tree." Omid cannot take advantage of the $250,000 he obtained illegally and in violation of public policy. *See Silverthorne Lumber Co. v. U.S.*, 251 U.S. 385 (1920) (J. Holmes) The subsequent agreements with Laudan do not absolve Omid from his initial wrongful conduct.

The Court concluded "[w]ithout evidence of a signed written agreement, the Court must treat this money as a gift by Defendant of nonmarital money, which allowed the parties to purchase the current marital home." The Court's conclusion is an abuse of discretion and the testimony clearly establishes the money was not a gift. The Court's finding is clearly erroneous by failing to recognize that Laudan, as a victim of domestic violence, was not in an equal negotiating position with Omid and that the agreement was void *ab initio*. Laudan was diagnosed with PTSD and from the totality of the evidence, Omid clearly controlled her emotionally and financially. Once he obtained the money, he coerced Laudan to allow him to use it to pay off his mortgage on Inverness.

C. The Increase In Value of the Allison Avenue Property – "Hiding the Ball"

Omid stipulated that he "materially participated" in the management of the real property. (D2/99) He did not enter a fair market value for the property on his Financial Statement in an attempt to "hide the ball" from Laudan. (A. 191) Laudan valued the property on her Financial Statement at $630,000. (A. 215) On May 29, 2013, Omid refinanced the initial Allison Avenue mortgage from $169,575 (Def. Ex. 75) to

$207,500. (Def. Ex. 80) His Financial Statement listed the mortgage balance was $91,200. (A. 190) The only evidence of fair market value in the record is Laudan's Financial Statement. The increase in value during the marriage as the result of Omid's material participation is $538,800 ($630,000 - $91,200). Even if just looking at the mortgage paydown during the marriage, the increase in value is $116,300 ($207,500 - $91,200).

Counsel argued that Omid deliberately failed to value Allison in his Financial Statement to obscure its increase in value. (D2/101) The Court commented "[i]s the burden on him, pursuant to the law to do that or the burden on the party asserting that there is a nonmarital increase, or marital increase," seemingly supporting "gamesmanship" by allowing a party to file an incomplete financial statement so the "increase in value" of separate property cannot be determined. Should the Court be encouraging litigants to "play dumb." *See* Verified Offer of Proof Pursuant to M.R. Evid. 103(a)(2). (A. 106)

The Rules of Civil Procedure require each party to complete and file a financial statement "showing the assets, liabilities, and current income." In the financial statement, it requires that the party take an oath stating "I certify that I will send the opposing party complete copies of this Financial Statement, my federal tax returns for the last two years." It also states, "I swear under penalty of perjury that the above statements are true and correct." Financial statements are record evidence in every divorce. *See, e.g., Riemann*, 2022 ME 13, ¶ 43. The only record evidence of fair market

value of Allison is Laudan's Financial statement valuing the property at $630,000. (A. 215)

"If during the marriage real property is partially acquired or its value is increased due to the investment of marital funds, property, or labor, then the portion acquired or the amount of the increase is presumptively marital property, and the burden of proof shifts to the party asserting that the parcel remains nonmarital property to prove that assertion by a preponderance of evidence." *Miliano v. Miliano*, 2012 ME 100, ¶ 23, 50 A.3d 534. "If the evidence in the record and the reasonable inferences to be drawn from such evidence, are adequate to provide a basis for any reasoned finding upon a particular issue, the issue should be resolved against the party with the burden of proof." *Mitchell v. Mitchell*, 2022 ME 52, ¶ 8, _ A.3d _.

The only record evidence of value of Allison was Laudan's sworn Financial Statement valuing the property at $630,000. "Property owners, by renowned ownership alone, may state their opinion as to the fair market value of their property." *Garland v. Ray*, 2009 ME 86, ¶ 21, 976 A.2d 940. This met Laudan's initial burden of proof to prove an increase in value. The burden then shifted to Omid. He offered no evidence with respect to fair market value or increase in value and thus failed to meet his burden of proof. The increase in value is therefore marital.

D. The Lanco Profit Sharing Plan, ESOP Plan, and Merrill Edge Accounts are Marital

In its Findings of Fact, the Court found that Omid purchased Lot 5 in Waterford,

Maine on March 8, 2022 for $19,500. The court stated:

> While most of the account funds are nonmarital, the parties stipulated that $141,000 is marital and located in that account [Edward Jones account]. Due to comingling these funds, there is not sufficient evidence that this property was purchased solely with nonmarital funds. The Court finds that it is marital and has a value of $19,500.

(A. 68, ¶ 37) The Court's finding compels a similar result with respect to Omid's Merrill Edge account. Omid established the Merrill Edge account ($28,600) by withdrawing money from the "comingled" Edward Jones account. (D1/201) Nonetheless, the Court awarded Omid the account as nonmarital property. (A. 68, ¶ 42) Clearly, if the Edward Jones account was comingled and the marital and nonmarital funds were "indistinguishable," like the Waterford property, there "[i]s not sufficient evidence that this property was purchased solely with nonmarital funds." (A. 68, ¶ 37)

Omid previously worked at Lanco Assembly Systems in 2011. He was *rehired* September 9, 2016. (Def. Ex. 106A) As of December 31, 2021, his Employee Stock Ownership Plan was valued at $29,006. Omid also had a profit-sharing plan that was valued at $39,495. (Def. Ex. 105) Omid did not list the profit-sharing plan on his Financial Statement. (A.193) The Court awarded both accounts to Omid as his nonmarital property stating "These accounts were created and funded when Plaintiff worked full-time at Lanco prior to the marriage," but made no finding to support its conclusion. (A. 68, ¶ 43) This finding is clearly erroneous because there is no evidence in the record to support the Court's conclusion with respect to either plan.

Omid testified, but offered no documentary proof, that $9,600 of his Lanco profit-sharing account was nonmarital property. (D1/200) He also asserted that he had a nonmarital interest in the Lanco ESOP. (D3/296) He claimed to have pulled a statement listing the value before marriage. Counsel objected and the Court upheld the objection stating, "So I heard - - I don't buy this foundation for his testimony, so I'm going to sustain the objection." (D3/298) In its findings, the Court stated, without evidence, that the accounts were "[c]reated and funded when Plaintiff worked full-time for Lanco prior to the marriage" contrary to his documented employment at Lanco from September 9, 2016 through April 2022. (D1/145, 146) The record is devoid of any evidence to support the Court's factual conclusion that either Lanco plan is nonmarital because"[i]t was created and funded when Plaintiff worked full-time at Lanco." (A. 68, ¶ 43)

E. The Court's Finding Regarding Omid's Income Is Clearly Erroneous

The Court's determination of a party's income or income capacity is reviewed for clear error. *Ehret*, 2016 ME 43, ¶ 14, 135 A.3d at 104. "In applying the clear error standard, we will vacate a factual finding if it is not supported by sufficient, competent record evidence.

The Court concluded that Omid was underemployed, capable of working 40 hours per week, and applied his hourly wage of $44.56 to arrive at an earning capacity of $92,684.80. (A. 70, ¶ 54) However, the Court did not include $18,000 in dividends reported on Omid's updated Child Support Affidavit. (A. 155) Laudan introduced a

summary from his IRS Wage and Tax Transcripts establishing that Omid also had capital gains of $10,955 in 2020 and $17,381 in 2021. (Def. Ex. 133) The Court failed to include capital gains in Omid's income.

Omid also earned income from Facebook Marketplace where he used an alias "Owen Gabay" to sell used personal property. Summarizing Omid's IRS Wage and Income Transcripts from 2014 to present, "Owen Gabay" reported proceeds to the IRS as follows: 2015 - $82,000; 2019 - $244,805; 2020 - $71,146; 2021 - $74,976; 2022 - *$605,091*. It is no coincidence that Omid failed to file his 2022 tax return where he would need to account for the *$605,091* in gross proceeds in a single year. Looking at the 2022 transcripts, Omid did report gains of $28,675.[9] Again, the Court did not include any of the sales in Omid's income.

Omid's income, at a minimum, should be as follows: Earning Capacity ($92,684); Dividends ($18,000); Capital Gains ($17,381) (*See* Def. Ex. 133); Facebook Marketplace ($28,675) (*See* FN 9); Total $156,740. The Court failed to include Omid's dividends reported on his Child Support Affidavit, his capital gains, or Facebook Marketplace capital gains.

F. The Court Failed to Value or Distribute Personal Property

Generally, the "divorce court is required to assign specific values to all marital

[9] The sales reported in Def. Ex. 146 at p. 143 ($30,262 - $24,900 = $5,362); p. 151 $40,000 - $32,750 = $7,250; p. 152 $26,856 - $20,698 = $6,158; p. 152 $49,163 - $40,449 = $8,714; p. 153 $21,705 - $20,514 = $1,191. The total equals $28,675.

property in order to make the resulted distribution more comprehensible to the litigants and to facilitate appellate review." Levy, Maine Family Law, § 7.8[1] at 7-64 (8th Ed. 2013). When distributing personal property in a divorce judgment, "[t]he trial court must 1) determine what of the parties' property is marital and [nonmarital]; 2) set apart each spouse's [nonmarital property]; and 3) divide the marital property between them in such proportion as the court deems just." *Young v. Young*, 2015 ME 89, ¶ 13, 120 A.3d 106. "If a final divorce decree fails to set apart and divide marital property over which the court had jurisdiction, the omitted property is deemed held by both parties as tenants-in-common." 19-A M.R.S. § 953(9) The statute further provides that either party may motion the court to set aside or divide the omitted property as justice may require.

Laudan submitted Def. Ex. 47 valuating and distributing her marital and nonmarital property, as well as Omid's. Omid attached an itemized list of marital and nonmarital property appended to his Financial Statement. (A. 201) According to Omid's Financial Statement, the total value of marital and nonmarital property to be set aside to him equals $59,450. The total includes $5,000 for the Caterpillar backhoe and $17,000 for the pontoon boat valued by the Court. (A. 68, ¶ 39) He valued the marital and nonmarital property to be set aside to Laudan at $35,200. Laudan valued the marital property to be set aside to her at $1,504. (*See* Def. Ex. 147)

The Court's judgment stated "each party is awarded those items of tangible

personal property in his or her name, possession or control." (A. 45) In its findings, the Court stated "Plaintiff testified at hearing that he would allow Defendant to go to 53 Lakeside Drive to do a walk-through of the home and identify furnishings and furniture that she wishes to have." (A. 69, ¶ 49) The fact that this is such a high conflict divorce makes this provision in the Court's findings like walking down the "yellow brick road," both unrealistic and unfair. Given the Court's omission, Laudan would be required to treat personal property as omitted and still the owner as tenants-in-common. 19-A M.R.S. § 953(9) There is no evidence as to whether certain property was marital or nonmarital. As in *Ehret*, the Court should remand so the Court can classify the parties' personal property as marital or nonmarital, assign monetary values to the property subject to the distributive order, and explain its rationale for the ultimate distribution of the parties' marital estate. *Ehret*, 2016 ME 43, ¶ 18, 135 A.3d 101.

VI. CONCLUSION

The Court abused its discretion in failing to evaluate and apply the best interest factors and by awarding sole educational rights to Omid without explanation. The Court further abused its discretion by failing to consider Laudan's relocation to work at Columbia University and by failing to consider allocating transportation responsibilities to and from New York. Finally, the Court made numerous, clearly erroneous factual findings regarding the value and allocation of marital property requiring reversal and remand of the Court's judgment.

Dated: May 6, 2024

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CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2024, I caused one copy of the Brief for Appellant to be served upon the following counsel of record via regular U.S. Mail and one electronic copy via e-mail:

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