STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Docket No. Cum-24-71

OMID GHAYEBI,
Plaintiff /Appellee

v.

LAUDAN GHAYEBI,
Defendant / Appellant

On Appeal From The Maine District Court (Portland)

BRIEF OF APPELLEE OMID GHAYEBI

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I. INTRODUCTION

This is an appeal from a judgment of the Portland District Court (*French, J.*) granting the Appellant Laudan Ghayebi (Laudan) and Appellee Omid Ghayebi (Omid) a divorce, as well as from the District Court's partial denial of Laudan's post-judgment Rule 52 motion for additional findings of fact and conclusions of law.

At the three-day final hearing, Omid and Laudan presented the divorce court with sharply conflicting evidence on numerous issues, both as to the factors to be weighed regarding the best interest of the parties' minor son, and also as to the classification, valuation and distribution of marital and non-marital property.

Nowhere in Laudan's brief is there a statement of the issues being presented for review.[1] Omid distills the following issues from Laudan's brief. Regarding the court's decision assigning parental rights, Laudan asserts that (1) the court failed to make sufficient findings or to sufficiently identify which "best interest of the child" factors it relied upon, (2) the court failed to explain its reasoning, and (3) the court "failed to even acknowledge" (Blue Br. 20) or "ignored" (Blue Br. 23-27)

[1] Laudan's Brief does not include the "Statement of the Issues Presented For Review" required by the Rules of Appellate Procedure. See M.R. App. P. 7A(a)(1)(e). Nor does the brief contain the optional Summary of the Argument, where the issues might have been identified. A summary of some of the arguments made in the Brief appears in the Brief's conclusion. (Blue Br. 40.) Omid will address Laudan's arguments in the order they are presented in her Brief, to the extent the underlying issues they raise may be discerned.

certain evidence she presented that, she argues, pertained to the best interest of the child factors.

Regarding the court's property distribution decisions, Laudan argues that the court made clearly erroneous findings and abused its discretion. (Blue Br. 31-39.)

Omid respectfully requests that the District Court orders be affirmed.

II. STATEMENT OF THE FACTS OF THE CASE, INCLUDING THE PROCEDURAL HISTORY

A. Facts Relevant To The Court's Parental Rights and Responsibilities Decisions.[2]

1. *Background, The Contempt Order, Living Arrangements, And The Parties' And* Child *'s Relationships*

Except as noted Laudan does not challenge the following facts.

Omid and Laudan were married in 2014. (Appendix to the Briefs (A.) 64, ¶2.) Omid is an industrial engineer by education and experience and has several specialized skills including manufacturing processes, human machine interface programming and finite element analysis. His current employment involves safety testing medical devices. (Trial Transcript Day 1, pages 148, 206-207.)[3] Omid

[2] The court issued "Findings of Fact and Conclusions Of Law" with its Judgment (A. 64-70) and also made three additional findings in its Order on Laudan's post trial motion for findings of fact. (A. 71-72). Further, the court stated that it was taking judicial notice of and "specifically adopt[ing] the procedural history and the findings of fact and conclusions of law contained in the previous orders of this Court." (A. 64 ¶ 1, emphasis added.) Those previous orders include two interim orders. (A. 73-77, 78-80), and the court's order finding Laudan in contempt (A. 81-97).

[3] This brief will utilize the same format for citing to the three-day trial transcript as does Appellant's brief: "D [trial day number] / [page number]." See Blue Br. 1, footnote 1.

previously worked for Lanco Assembly Systems, Inc. (A.70, ¶ 54) from 2008-2013 and 2016-2022. (D1/145-146.) Laudan has a Masters of Public Health degree from Columbia University, with a focus in infectious disease epidemiology. (D2/181-182.) Laudan works for Columbia University in New York City. (A. 205.)

The parties have one minor child, Child Ghayebi (Child), born on October 6, 2016, who at the time of the trial in 2023 was six years old. (A. 64, ¶¶ 7, 8.) Omid has a 17-year-old daughter, Sahra, from a prior marriage who attends Falmouth High School. (A. 64, ¶ 9.) Omid currently lives in Falmouth. (A. 64, ¶ 5.)

The court took judicial notice of and adopted into its judgment the prior orders issued in this matter, specifically referencing prior factual findings. (A. 64, ¶ 1.) Included in such prior orders was the order (*Cashman, J.*) (A. 81-97) finding Laudan in contempt of the court's December 27, 2021, interim order. That interim order (A. 78-80) had established Omid's pre-divorce contact with Child. (A. 78-80, 94.) The court's contempt order recited Laudan's "unilateral and complete termination of Omid's in-person contact with Child." (A. 94.) That court found that Laudan's actions resulted in Omid not seeing Child for over three months. (A. 89, 94 and n.10.) The court deemed Laudan's failure to comply with the contact schedule to be "willful and repeated." (A. 94.) All of this was incorporated into the

divorce court's factual findings and, in turn, into its final judgment. (A. 64, ¶ 1; A. 39.)

Prior to the August 2023 trial Child had not started school, which had a negative impact on him socially and academically. (A. 65, ¶ 12.)

Laudan does not facilitate or encourage frequent and meaningful contact between Omid and Child. (A. 65, ¶ 14; A. 81-97; D3/364-365.) As noted, Laudan was found in contempt for withholding court-ordered contact between Omid and Child. (*Id.*; A. 81-97.) The parents have very different parenting styles. (A. 65, ¶ 15; D1/75-76.)

Regarding Child's living arrangements, the court found that the parties have been living apart for much of Child's life. (A. 65, ¶ 17.) Child has primarily been living in Falmouth, Maine, with one or both of the parties. (A. 65, ¶¶ 17, 18.) Beginning in 2021, Child was living part of the time with Laudan in New York or Connecticut. (*Id.*)

Omid has attended a co-parenting education workshop. (A. 65, ¶ 23.) The parties communicate through the parenting application Our Family Wizard. (A. 65, ¶ 24.) Omid believes that Laudan is a loving parent of Child and provides him with good care. (A. 64, ¶16.) Child has a "close and bonded" relationship with Laudan's mother, Nancy Behrouz. (A. 65, ¶ 19.) Child and Sahra (Omid's daughter) also

have a close and bonded relationship. (A. 65, ¶ 10.) Laudan's relationship with Sahra "deteriorated" after Omid and Laudan married. (A.65, ¶ 11.)

2. *The Protection From Abuse Complaints, And Laudan's Abuse Allegations*

Omid and Laudan presented starkly different testimony regarding Laudan's allegations of abuse.

Omid filed a protection from abuse (PFA) complaint against Laudan in June of 2020. He later dismissed this voluntarily in July of 2020. (A. 66, ¶ 26.)

Laudan filed two PFA complaints against Omid. (A. 66, ¶¶ 27, 28.) The first, filed November 18, 2021, Laudan brought on behalf of herself and Child. That matter was consolidated and heard with the final divorce trial. (A. 66, ¶ 27.) Laudan testified at trial, and now argues at length (Blue Br. 1-7, 9-16, 23-27), that she and Child were victims of ongoing domestic abuse by Omid.

Omid, in his testimony at trial, categorically denied that he had ever been abusive in any manner to either Laudan or Child:

> Q: Okay. So let's get into the abuse allegations of Child. So I do want you in this moment to look at Judge French, despite the microphone, and I want you to tell Judge French if you have ever, ever been physically abusive in any manner -- I'm talking about physical, emotional, mental, sexual, any abuse. Have you been abusive in any capacity to your wife? I want you to look Judge French in the eye and answer that question.
>
> A: No, I have not.

Q: Have you been abusive in any manner, saying physical, emotional, verbal, mental, sexual with your son, Child?

A: No, never.

Q Never --

A Never.

Q -- in any capacity?

A No.

(D1/91.) Omid went on, consistently and without qualification, to deny each of Laudan's specific allegations of physical, emotional, economic, and sexual abuse, and in particular Omid denied Laudan's allegation that he had put sheetrock screws in his own driveway. (D1/92-103; D1/146-148; D3/270-277.)

Moreover, independent investigations of the Maine DHHS, the Falmouth Police Department and the GAL did not result in any action being taken against Omid based on Laudan's allegations of abuse. (See footnote 4, below.) The GAL's Final Report made no finding of abuse. (A. 255, ¶¶ L, M.) The divorce court considered the evidence presented by the parties at the final hearing and determined that Laudan "did not prove evidence of abuse by a preponderance of the evidence by [Omid] against Laudan or Child." (A. 66, ¶ 27.)

Laudan's second PFA complaint was filed on January 6, 2022, again on behalf of herself and Child. It was heard on March 2, 2022, and the court found

that Laudan failed to establish abuse by a preponderance of the evidence, and that complaint was dismissed. (A. 66, ¶ 28.)[4]

Except where conflicting testimony is noted Laudan's appeal makes no argument that the above facts are unsupported by competent record evidence.

B. Facts Relevant To The Court's Equitable Division Of Marital Property And Distribution Of Nonmarital Property.

The court made extensive factual findings about the parties' marital and non-marital property, both real and personal. (A. 67-69, ¶¶ 33-50.) It reviewed the parties' real property and made findings about the status of each as marital or non-marital and assigned a value to each where there was sufficient evidence to do so. (A. 67-68, ¶¶ 33, 34, 36, 37, 38.) The court also assigned values to the parties' personal property where there was sufficient evidence to do so and awarded ownership of all the personal property to one of the parties. (A. 68-69, ¶¶ 39-50.)

Laudan raises several issues concerning the court's distribution of property. Laudan describes a $250,000 transfer she made to Omid of her non-marital funds as a loan, asserting that the parties agreed that the money would remain her non-

[4] The divorce court, as noted, adopted the findings in its prior orders. In the order finding Laudan in contempt of the contact provisions of the interim order, the court recited the following facts. The Maine Department of Health and Human Services, had investigated Laudan's allegations of abuse as they related to Child. DHHS closed the file with no further action. (A. 90-91.) The Falmouth Police Department conducted its own investigation, including a CAC interview, and filed no charges. (A. 91.) The court stated it would be deciding the matter on the facts presented at the instant hearing, not on a res judicata basis from prior decisions. (D1/106-107.) The court did allow Omid to testify that he had been investigated by the Falmouth Police and DHHS and no criminal charges or substantiation of abuse had resulted from those investigations. (D1/110-112.) In her Final Report the GAL made no findings of abuse by Omid toward either Laudan or Child. (A. 255, ¶¶ L, M.)

marital property. (Blue Br. 7-9) Omid testified (D1/172-173), and the court determined, that the money was a gift. (A. 67, ¶ 35.) Ultimately, however, Laudan argues that the initial transfer should be deemed void as against public policy. (Blue Br. 32-33.) The court found that the parties agreed to use the funds to purchase the marital home (A. 67, ¶ 35; D3/216), a finding that Laudan does not dispute. (Blue Br. 32.)

Laudan challenges the court's finding regarding real property at 83 Allison Avenue in Portland. The court determined the following facts. The property was acquired by Omid prior to the marriage. (A. 67, ¶ 33.) The court determined there was "no credible evidence … as to the value of this property and the court declines to speculate." (*Id.*) Mortgage payments were made during the marriage. However, "sufficient evidence was not presented at trial as to the amount paid on the mortgage during the marriage or the value of the marital component." (*Id.*) The court concluded that Laudan did "not [meet] her burden to prove that during the marriage the real property was partially acquired or that its value increased." (*Id.*) The court thus deemed the property non-marital and set it aside to Omid. (A. 43, §6(A)(i).)

Laudan makes additional claims of the court making clearly erroneous property related factual findings in the Argument section of her brief. Omid will set forth relevant facts and address them below.

C. Procedural History

Omid accepts Laudan's statement of the procedural history of this case.

III. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

A. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN ESTABLISHING PARENTAL RIGHTS AND RESPONSIBILITIES.

B. WHETHER THE DISTRICT COURT ABUSED ITS DISCRETION IN SETTING ASIDE THE PARTIES' SEPARATE PROPERTY AND ITS EQUITABLE DISTRIBUTION OF MARITAL PROPERTY.

IV. SUMMARY OF THE ARGUMENT

Laudan asserts that the District Court's determination as to parental rights and responsibilities was, for several reasons, an abuse of its discretion. She argues that (1) the court did not make specific findings relating to the statutory "best interest" factors a court must consider; (2) the court did not sufficiently explain its reasoning; and (3) by "ignoring" certain evidence she says was essential to include in the best interest analysis.

The District Court committed no error when it (1) applied its factual findings to the statutory best interest of the child standards; (2) assigned limited decision-making to Omid regarding which school Child would attend; (3) found that Laudan had not established domestic abuse by Omid; and (4) established a parental

contact schedule that reflected Laudan's employment in and potential relocation to New York.

Laudan also argues that the Court abused its discretion in its distribution of the parties' non-marital and marital property. Contrary to Laudan's arguments the District Court committed no errors in its decisions (1) to treat the $250,000 provided by Laudan to Omid as a gift to Omid and ultimately, by agreement, to the marital estate when used to facilitate the purchase of the parties' marital home (a home the court deemed "entirely marital" property); (2) that Laudan had not established a marital component to the Allison Avenue property; (3) setting aside certain intangible financial and bank accounts to Omid as non-marital property; (4) establishing an imputed income for Omid based on his earning capacity and excluding non-ongoing income; and (5) awarding to each party those otherwise unaddressed items of tangible personal property that were in his or her name, possession or control.

Omid respectfully requests that the District Court's judgment be affirmed.

V. ARGUMENT

STANDARDS OF REVIEW

"When a court determines parental rights and responsibilities, it applies the best interest of the child standard." *Proctor v. Childs*, 2023 ME 6, ¶ 6, 288 A.3d 815 (quoting *Grant v. Hamm*, 2012 ME 79, ¶ 6, 48 A.3d 789); *see* 19-A M.R.S. § 1653(3) (2023). Factual findings of a divorce court are reviewed "for clear error and the ultimate conclusion regarding the child's best interest for an abuse of discretion." *Low v. Low*, 2021 ME 130, ¶ 9, 251 A.3d 735. "Substantial deference is given to the trial court because the court is able to appraise all the testimony of the parties and their experts." *Id*. (internal quotation omitted).

Under the clear error standard, a finding will be upheld where it is supported by competent evidence in the record. *Boyd v. Manter*, 2018 ME 25, ¶ 6, 179 A.3d 906. ¶ 6; *Akers v. Akers*, 2012 ME 75, ¶ 3, 44 A.3d 311.

The trial court's determinations as to whether property held by the parties is marital or non-marital is reviewed for clear error, *Murphy v. Murphy*, 2003 ME 17, ¶ 20, 816 A.2d 814, as is the valuation of property. *Id*. ¶19. "Trial courts have broad discretion when dividing marital property" and those decisions are reviewed for an abuse of discretion. *Id.* ¶ 27.

Conclusions of law are reviewed de novo. *Riemann v. Toland*, 2022 ME 13, ¶ 27, 269 A.3d 229.

A denial of a motion for additional factual findings is reviewed for an abuse of discretion. *McCarthy v. Guber*, 2023 ME 53, ¶ 10, 300 A.3d 804. An abuse of discretion exists if the decision is "plainly and unmistakably an injustice that is so apparent as to be instantly visible without argument." *Sloan v. Christianson*, 2012 ME 72, ¶ 26, 43 A.3d 978.

A. The District Court Acted Within Its Discretion In Its Decisions To Award Shared Parental Rights And Responsibilities And Shared Primary Physical Residence

1. *The District Court Committed No Abuse Of Its Discretion In Its Recitation And Application Of The Best Interest Factors.*

When a court makes a parental rights and responsibilities decision, "[t]he court has a duty to make findings sufficient to inform the parties of the reasoning underlying its conclusions and to provide for effective appellate review…" *Grant,* 2012 ME 79, ¶ 13, 48 A.3d 789. "The court need not 'robotically' address every factor in an effort to make clear that it has considered them, 'so long as it is otherwise evident that the court has evaluated the evidence with the best interest factors in mind.'" *Whitmore v. Whitmore*, 2023 ME 3, ¶ 8, 288 A.3d 799 (quoting *Nadeau v. Nadeau*, 2008 ME 147, ¶ 35, 957 A.2d 108). Thus, when a trial court's judgment establishing parental rights and responsibilities contained "*no reference to the [best interest] factors as a whole* or to any factor in particular" it may represent an abuse of discretion. *Whitmore*, 2023 ME 3, ¶ 9, 288 A.3d 799 (emphasis added.)

The court's findings in this matter are not analogous to those found insufficient in *Whitmore*. The divorce court in *Whitmore* erred where its parental rights decision was wholly unconnected – in this Court's words, made "no reference" – to the statutory factors in section 1653(3). In contrast, the court's judgment here stated:

> The Court is directed, pursuant to 19-A M.R.S.A. §1653(3), (fn1) to consider a number of factors in making an award of parental rights and responsibilities, *and the court has considered each factor* in making its determination.

(A. 40) (emphasis added).

The District Court, having recognized the statutory framework and having stated it was considering "each factor," also recited section 1653's best interest factors. (A. 40, footnote 1.) While the court did not engage in a "robotic" exercise of addressing each statutory factor, the factual findings (A. 64-66, ¶¶ 5-28; A. 72.) pertaining to Child, Laudan, and Omid aligned with many of them. The court's factual findings included the parties' parenting style and their need and ability to work together; Child's close relationship with Sahra and Nancy Behrouz (Laudan's mother); the parties' history of conflict; the contempt order against Laudan for preventing Omid's pre-trial contact with Child; Tayid's age and the need for Child to begin school; Child having lived primarily in Falmouth, Maine; that Laudan had not facilitated or encouraged contact between Omid and Child; Omid's participation in co-parenting education; and Laudan's failure to prove any

abuse by Omid against herself or Child. These findings both address many of the best interest factors[5] and fulfill the court's duty "to inform the parties of the reasoning underlying its conclusions."

2. *The District Court Made Findings Sufficient To Support Its Decision Giving Omid Limited Decision-Making Authority To Choose Child's School.*

Laudan argues that the court erred when it, as Laudan's asserts, "allocated Omid sole rights over Child's education." (Blue Br. 22-23.) At the outset, Laudan overstates the scope of the court's order on this issue. The court allocated to Omid a single specific right, to make the final decision "as to which school Child shall attend." (A. 41, ¶ A.) All other rights to make decisions as to Child's education

[5] The statutory factors that align with the court's factual findings include:

> A. The age of the child;
> B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;
> …
> D. The duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;
> E. The stability of any proposed living arrangements for the child;
> F. The motivation of the parties involved and their capacities to give the child love, affection and guidance;
> G. The child's adjustment to the child's present home, school and community;
> H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;
> I. The capacity of each parent to cooperate or to learn to cooperate in child care;
> J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;
> …
> N. All other factors having a reasonable bearing on the physical and psychological well-being of the child;

19-A M.R.S. § 1653(3). Additionally, the court must consider "[t]he existence of a history of domestic abuse between the parents …" and "[t]he existence of any history of child abuse by a parent." 19-A M.R.S. § 1653(3)(L), (M). The court determined neither of these had been proved. (A. 66 ¶¶ 27, 28.)

were encompassed by the court's award of shared parental rights and responsibilities. (*Id*.)

Omid's limited right to make a final decision on a school was supported by factual findings. Child, who was six years old (nearly seven), had not yet begun school and was negatively affected by this, socially and academically. (A. 65, ¶ 12; Trial Tr. D1/ 72-73; D2/176-177.)[6] Child had resided primarily in Falmouth. (A. 65, ¶ 18). Further, contrary to Laudan's assertion that Omid never requested that he be allocated decision making authority, Omid in fact did so, as reflected in the GAL's report. (A. 244.)

3. *The Court's Determination That Laudan Failed To Prove Domestic Abuse Was Not Clearly Erroneous.*

Laudan asserts that the court's determination that she had failed to prove domestic abuse was clearly erroneous. Laudan's argument on this issue does not assert that there was no competent supporting its determination of no abuse. Her argument appears to be focused on asserting that the court erred when it did not fully discuss, acknowledge, and sufficiently credit the evidence she presented. (Blue Br. 23-28.)

Laudan both misperceives the scope of divorce court's required findings and overlooks the findings the court actually made on these issues. Broadly, the court

[6] Although not included as a factual finding, the court heard testimony that the Falmouth school year was to begin approximately 10 days after the final trial date, and that Child had not yet been screened to determine his appropriate grade level. (D2/176-178.)

was not required to address in its factual findings each piece of evidence offered by Laudan. *See Sloan v. Christiansen*, 2012 ME 72, ¶ 36, 43 A.3d 978 ("t]o the extent the court's order did not address a particular piece of testimony or admitted evidence, it was not required to"); *State v. Gurney*, 2012 ME 14, ¶ 1 n.2, 36 A.3d 893 ("[t]he court is not required to address each piece of admitted evidence in its findings . . . ."). More specifically, regarding the allegations of domestic abuse, the court did in fact make express factual findings: it determined that Laudan had not met her burden of establishing abuse by a preponderance of the evidence. (A. 66 ¶¶ 27, 28.)

Laudan argues that the court erred when, in Laudan's words, the court "ignored" and made no findings regarding her testimony, that of Nancy Behrouz (Laudan's mother), and Susan Benjaminsen (Laudan's therapist) on the issue of alleged domestic abuse. (Blue Br. 23-28.) Yet, the court had wide discretion to determine what weight, if any, to give to any witness or evidence. *See Sulikowski v. Sulikowski*, 2019 ME 143, ¶ 14, 216 A.3d 893 ([t]he trial court is the sole arbiter of witness credibility, and it is therefore free to accept or reject portions of the parties' testimony based on its credibility determinations and to give their testimony the weight it deems appropriate.") (citation omitted). Further, as noted, the court has no obligation to evaluate every witness's testimony in its findings.

In any event, in his testimony Omid categorically denied that he had ever been abusive in any manner to either Laudan or Child. *See supra* at pp. 5-7. Separate investigations, generated by Laudan's abuse allegations, were undertaken by the Falmouth Police Department and DHHS, with no resulting action taken against Omid, and the GAL's report made no finding of abuse.

The court committed no error when it weighed all the evidence before it and reached the factual determination that no abuse had been proven.

4. *The Court Committed No Error In Rejecting Laudan's Claim Of Economic Abuse Regarding The $250,000 Transfer.*

Laudan asserts that, with respect to its disposition of property, the court erred when it "totally ignored and made no findings" on her testimony regarding economic abuse involving the $250,000 transfer from Laudan to Omid. (Blue Br. 28-29.)

Laudan's argument makes no mention of the court's extensive factual findings directly addressing that money. The court identified the origin of the money, the parties' original understanding as to its purpose, the parties' subsequent agreement to use it to pay off a mortgage, and the ultimate use of that property's equity to purchase a marital home – which the court ultimately deemed to be an "entirely marital" asset. (A. 67, ¶ 35.) The only factual dispute was whether the money was intended as a gift or a loan. Omid testified it was a gift (D1/172, 239), and the court was free to find that testimony credible.

Given the court's comprehensive findings, and where Laudan does not otherwise argue that the findings were clearly erroneous, the court provided factual findings "sufficient to inform the parties of the reasoning underlying its conclusions." Nothing further was required.

Laudan also lists several other events that she characterizes as evidence of economic abuse, such as the parties' lack of joint bank accounts, and payments she made for Child's expenses. (Blue Br. 29.) First, the court was not compelled to accept this testimony as credible. Second, even taken as true, the court was not obligated to find that these assertions constituted "economic abuse" as defined by 19-A M.R.S. § 4102(5) (2023).[7]

No further findings were required.

5. *The Court Committed No Error Regarding Laudan's Possible Relocation To New York.*

Laudan argues that the court erred in not making express findings on her possible relocation to New York. (Blue Br. 29-30.). The primary flaw in her argument – one created by Laudan's failure to list her issues presented for review,

[7] 19-A M.R.S. 953(1)(D) requires a court to consider economic abuse in the equitable distribution of property. Economic abuse is defined in 19-A M.R.S. § 4102(5):

> 5. Economic abuse. "Economic abuse" means 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 medications or shelter.

and not remedied elsewhere in her brief – is that Laudan has not identified which decision by the court was affected by this alleged error.

Laudan's failure to connect the court's alleged error in assessing her trial evidence regarding her possible relocation to an issue now identified as presented for review means any such claim of error is waived. *See, e.g.*, *Holland v. Sebunya*, 2000 ME 160, ¶ 9 n.6, 759 A.2d 205 ("The failure to mention an issue in the brief or at argument is construed as either an abandonment or a failure to preserve that issue.").

Second, as noted above, the fact that a court's judgment and findings do not expressly address certain evidence is not, by itself, an error. *See Sloan v. Christiansen*, 2012 ME 72, ¶ 36, 43 A.3d 978 ("t]o the extent the court's order did not address a particular piece of testimony or admitted evidence, it was not required to."). The court's choice here not to recite particular evidence may reflect that the court did not find the evidence credible or convincing on the issue for which it was offered.

In sum, the trial court's findings recite evidence relating to section 1653(3)'s best interest factors, in particular its determination that no domestic or economic abuse had occurred, and otherwise state facts sufficient to inform the parties of its reasoning. All are based on competent record evidence. The court committed no

abuse of discretion when it awarded the parties shared parental rights and responsibilities and shared primary residential care.

B. The District Court Acted Within Its Discretion In Its Valuation And Distribution Of Marital And Non-Marital Property

1. *The District Court Committed No Abuse Of Its Discretion In Not Issuing A Chart And Its Decisions Regarding Certain Marital Property.*

Laudan asserts that the court abused its discretion when it declined to prepare "any tables showing the distribution of marital property" and stating as law a requirement that the court "must display the property distribution in table form ..." (Blue Br. 31.) (See A. 72.)

This Court has certainly noted that such tables are "valuable to the parties" and has "consistently encouraged courts to include them in their judgments." *Ehret v. Ehret*, 2016 ME 43, ¶ 18 n.4, 135 A.3d 101. *Ehret* does not, however, stand for the proposition that a court commits reversible error solely by not generating such a table, and Laudan cites no authority for such a proposition.[8]

Laudan asserts that the court erred by its "failure to distribute $74,500 of personal property the court awarded to Omid." (Blue Br. 31.) This argument disregards the court's findings and judgment. The court identified the property, classified it as marital, assigned values to each item, and distributed it. (A. 68, ¶

[8] The court noted that, although Laudan had access to the information required to prepare such an allocation of property spreadsheet, she did not submit one with her request for findings of fact. (A. 72.)

39; A. 45, ¶ (B) ("Each party is awarded those items of personal property in his or her, name possession or control.")) Laudan does not suggest that the court did not have the authority to distribute marital property to one or the other party. Here it did so by means of the party's status as named owner, or by the party's possession or control. The court committed no abuse of discretion.

Laudan asserts that certain financial accounts were erroneously not characterized and distributed as marital property. (Blue Br. 31.) This does not reflect the judgment. The court identified each of the seven accounts listed as being held solely in Omid's name. (A. 69, ¶ 46; see A. 192 (seven accounts in Omid's name.)) The court recognized that each account had a "marital portion" due to contributions during the marriage "but the extent of those contributions was not presented as evidence at hearing." (A. 69 ¶ 46.)

The burden of proving the increase in value during the marriage of non-marital is on the party asserting a marital component, *Hedges v. Pitcher*, 2008 ME 55, ¶ 15, 952 A.2d 1217, and that party must offer evidence of a specific amount of marital increase in value. *See Violette v. Violette*, 2015 ME 97, ¶ 24, 120 A.3d 667 (where party failed to establish specific amount of marital component, no error in finding the property wholly non-marital).

Under these circumstances there was no error in the court awarding the accounts to Omid.

2. *The Issue Of Whether The $250,000 Transfer To Omid Violates Public Policy Was Not Preserved For Review; In Any Event, Laudan's Public Policy Argument Is Unsupported By The Facts, And The Trial Court's Finding That The Transfer Was A Gift Was Supported By Competent Evidence*.

The parties agree that after they married but prior to the birth of Child, Laudan transferred $250,000 to Omid. Laudan asserted at trial that the $250,000 was a loan. Omid testified that it was a gift. The court found that the purpose of the payment to Omid was "security for their marriage and for [Omid] to have funds should [Laudan] ever flee the State of Maine with Child." (A. 67 ¶ 35; D1/172-173.) There was trial testimony, not disputed by Laudan (Blue Brief 32), that the parties later reached an agreement that the money would be used to pay off an existing home mortgage. That occurred, and the resulting equity in that property allowed the parties to then purchase their marital home on Lakeside Drive in Falmouth. (A. 67, ¶ 35.) The court found, in the absence of any written agreement or promissory note, that the money was a gift by Laudan. (A. 67 ¶ 35.)

Laudan now argues that the transfer of money to Omid was void as contrary to public policy, and that the court's determination that the transfer was a gift was clearly erroneous. (Blue Br. 32-33.) Laudan is incorrect on both counts.

As an initial matter, however, the Court can find that Laudan has waived this issue. An issue will not be reached "if the issue is raised for the first time on

appeal." Alexander, *Maine Appellate Practice* § 402 at 238 (6th ed. 2022) (citing *Dobson v. Secretary of State*, 2008 ME 137, ¶ 3, 995 A.2d 265). An argument raised for the first time in a post-judgment motion does not preserve that issue for appeal. *Maine Appellate Practice* § 402 at 238; *see Warren Construction Group v. Reis*, 2016 ME 11, ¶ 9, 130 A.3d 969 (citing *Dillon v. Select Portfolio Servicing,* 630 F.3d 75, 80 (1st Cir. 2011)).

The "void as against public policy" argument was not raised by Laudan by pre-trial motion in limine or other motion, or during trial, or in opening or closing arguments. Nor did Laudan raise the issue in any post-trial, pre-judgment motion. In the absence of this issue being raised, the court's factual findings and judgment (unsurprisingly) did not address it.

The first mention of the public policy argument was in a section heading in Laudan's post-judgment "Proposed Finding of Fact and Conclusions of Law." (A. 129.) That heading states: "The Plaintiff Took Advantage of Defendant in Requesting $250,000 as Security for a Child, a Clear Violation of Public Policy." (*Id*.) This section of the proposed findings identified no public policy that was violated and provided the court no analytical framework for the court to review the issue. The limited fact-based argument was more an assertion that the payment resulted from duress – "manipulation," as the filing put it. (A. 129, ¶ 4.) There was no citation to the principles and authority that Laudan now presents, or any

authority at all for that matter. (*Id*.) It was, in effect, a bare bones assertion of the words "public policy."

Laudan's one-time reference to public policy, in a post-judgment motion, without citation to authority or any developed analysis, was both untimely and insufficient to place the issue before the trial court. In short, Laudan failed to preserve this issue for appeal, and Omid asks that this Court decline to address it further.

Even if this Court were to consider Laudan's public policy argument, however, Laudan's cited authorities do not establish a basis for relief. In *Court v. Kiesman*, 2004 ME 72, 850 A.2d 330, the parties entered into a contract that allowed the payor father to forgo paying three years of child support in exchange for giving the payee mother a motor vehicle. *Id*. at ¶¶ 2-3. When the mother brought a subsequent action for enforcement, this Court ruled that public policy prohibits parents contracting away existing, court-ordered payments benefitting a child – there, child support. *Id*. ¶ 14. Here, of course, there were no existing court-ordered payments benefitting Child, neither when the parties entered first into their agreement nor when the parties agreed to pay off the Inverness Road mortgage. Laudan offers no explanation as to how the parties' agreement violated any court order or otherwise worked to the detriment of Child.

In *Riemann v. Toland*, 2022 ME 13, 269 A.3d 229, this Court again looked to the interest of the parties' child when it prohibited the enforcement of an attorney's fee waiver in a premarital agreement. *Id*. ¶¶ 25-41. The public policy prohibition applied when enforcement "may hinder the court's ability to assess and address issues regarding the best interest of the child, including provision that could negatively affect a party's right to litigate such issues regarding the best interest of a child ..." *Id*. ¶ 39.

Here, Laudan offers no argument that the transfer of funds to Omid, occurring before Child was born, and that ultimately facilitated purchasing a marital property home, either hindered the court's ability to assess the best interest factors, or hindered Laudan's ability to litigate those issues. Plainly, neither was present here. That is why, perhaps, Laudan's argument pivots away from establishing that the agreement affected Child, and towards offering the rhetoric that the agreement was "offensive to human dignity" and a "degrading transaction." (Blue Br. 32.) The agreement may have been uncommon, but it did not violate any public policy.

Finally, the court's determination that the transfer was a gift was supported by the testimony of Omid. (D1/172-173.) There was no evidence of a signed agreement or promissory note (A. 67 ¶ 35) and Laudan does not suggest that such

documents existed. On this evidence the court's factual finding that the transfer of money was a gift was not clearly erroneous.

In sum, Laudan's argument that the parties' agreement violated public policy was waived and, in any event, identifies no basis for relief from this Court.

3. *The Court's Finding That Laudan Failed To Establish A Marital Component For The Allison Avenue Property Was Not Clearly Erroneous.*

The trial court's determinations as to whether property held by the parties is marital or non-marital is reviewed for clear error, *Murphy,* 2003 ME 17, ¶ 20, 816 A.2d 814, as is the valuation of property. *Id*. ¶19.

Omid acquired the Allison Avenue property prior to marriage (A. 67, ¶ 33), so the property was presumptively non-marital. *See* 19-A M.R.S § 953(2) (marital property is "all property acquired by either spouse subsequent to the marriage"). An increase in the value of nonmarital property, if due to the investment of marital funds, property or labor, may be deemed marital property. 19-A M.R.S. § 953(2)(E)(2)(A), (B); *Miliano v. Miliano*, 2012 ME 100, ¶ 23, 50 A.3d 534.

As noted above, the burden of proving the increase in value during the marriage is on the party asserting a marital component. *Hedges v. Pitcher,* 2008 ME 55, ¶ 15, 952 A.2d 1217. That party must offer evidence of a specific amount of marital increase in value. *See Violette*, 2015 ME 97, ¶ 24, 120 A.3d 667 (where party failed to establish specific amount of marital component, no error in finding

the property wholly nonmarital). "Once that appreciation has been established" sections 953(2), (3) "create the rebuttable presumption that the increase in value is marital." *Hedges,* 2012 ME 100, ¶ 15, 952 A.2d 1217. "The increase in value during marriage of property acquired prior to marriage will normally be determined by comparing the property's fair market value at the time of the parties' marriage and the time of the hearing on the divorce or separation complaint." Levy, *Maine Family Law* § 7.6[4][e] (8th ed. 2013).

The court made extensive findings about the acquisition and alleged increase in value to determine if there was an identifiable marital component. (A. 67, ¶ 33.) The court determined that although Omid "materially participated in management of the property during the marriage," that "no credible evidence was presented as to the value of this property and the court declines to speculate." It concluded:

> sufficient evidence was not presented at trial as to the amount paid on the mortgage during the marriage or the value of the marital component. Defendant has not met her burden to prove that during the marriage that the property was partially acquired or that its value increased.

(A. 67, ¶33.)

Laudan's argument asserts that two calculations establish a marital component: the decrease in the outstanding mortgage, and the change in value of the property. (Blue Br. 33-35.) Yet, neither could do so without the court needing to engage in speculation. Regarding the mortgage values, Laudan cites a starting mortgage value of $207,500 and subtracts the current mortgage value to show an

alleged marital component. The flaw is that the starting value she uses was the mortgage amount from one year before the parties were married.[9] Nor can the mortgage on the marriage date (even if it had been established) substitute for that earlier property value, as it could certainly have been different (in an unknown amount) than the property's value. Because Laudan presented no evidence as to the mortgage balance as of the date of marriage, the court could not establish the decrease in the mortgage that occurred during the marriage without speculation.

Second, Laudan testified as to the current value of the property. However, although property owners are allowed to testify as to the fair market value of their property, *Garland v. Roy*, 2009 ME 86, ¶ 21, 976 A.2d 940, Laudan was not an owner.[10] Further, she did not establish the property's value on the date of marriage.

In short Laudan did not present credible evidence, as of the date of marriage, of either the fair market value of the property or the outstanding mortgage debt. Nor did she establish the property's present value. On the facts before it the court correctly concluded that it would have to engage in speculation to assign a value to

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[9] The parties were married on May 25, 2014. (A. 64.) The date of the "beginning" mortgage value cited by Laudan was May 29, 2013. (Blue Br. 33, citing Def. Ex 75.)

[10] A spouse's opinion as to valuation of real estate that has been substantially improved may be deemed competent evidence by a factfinder. *See Maine Family Law* § 7.6[1]. But the court is not compelled to find such evidence credible or persuasive. "As a general rule … the fair market value of real property should be established through the testimony of an expert witness." *Id*. n.332. Further, here Laudan identified no substantial improvements to the property, and offered no expert testimony as to value.

any marital component of the property. The court committed no error when it declined to do so.

4. *The Court's Determinations That The Merrill Edge Account And The Two Lanco Accounts Were Omid's Nonmarital Property Were Supported By Competent Evidence.*

The court determined that Omid was the owner of an account identified as the Merrill Edge account and awarded it to him as his non-marital property. (A. 68, ¶ 42.) A review of record evidence supports the court's conclusion.

Omid was previously the owner of real property on Inverness Road in Falmouth. (D1/166-167; A. 67, ¶ 34.) It was nonmarital, purchased by Omid prior to the marriage and titled solely in Omid's name. (*Id.*)

Upon the sale of that property Omid realized proceeds of $380,000. (D1/186.) Omid deposited this money first into accounts at Camden National Bank and Bank of America, then transferred a portions of it into a Merrill Lynch Edge account he owned, and a portion into an Edward Jones account. (D1/186-187.)

Laudan claimed there was a $141,000 marital component in the Inverness property. (See D2/43.) Omid disputed this, but at trial he chose to stipulate to that amount rather than contest it (D2/43-44, 45), and also stipulate that Laudan's equitable one-half interest would be $70,500. (D2/44.) Omid further stipulated that the Inverness Road proceeds were in the Edward Jones account. (D2/44-45.) Based on these stipulations the court then found that the Inverness Road marital property

component was $141,000 (A. 67, ¶ 34) and that that money was in Omid's Edward Jones account. (A. 67, ¶ 34; A. 68, ¶ 41.) Accordingly, the court's judgment awarded Laudan her one-half interest in this marital component ($70,500) from the Edward Jones account. (A. 45, ¶ B.)

With both the amount and location of the funds representing Laudan's claimed Inverness Road marital interest resolved in full, by stipulation, the Merrill Lynch Edge account does not contain funds subject to any marital interest. As a result, the Merrill Edge account is funded solely by Omid's non-marital share of the proceeds from Inverness Road property sale. The court correctly found that the Merrill Edge account was Omid's non-marital property.[11]

Laudan next challenges the court's determination that two accounts in Omid's name were non-marital. (Blue Br. 36-37.) Omid owned two accounts from Lanco, an ESOP account and a retirement account (also identified as the 401K or profit-sharing). Omid had worked for Lanco in 2008-2013, prior to the marriage. (A. 68, ¶ 43; D1/145; D3/296.) Both accounts were held in Omid's name. (D2/171;

[11] Laudan argues the Merrill Edge account was marital because it was funded from an Edward Jones account. (Blue Br. 35-36.) The court deemed the Edward Jones account partly marital, in the amount of $141,000, exactly reflecting the parties' stipulation. (A. 67 ¶34; A. 68 ¶41.) In fact, in the testimony Laudan cites (D1/201), Omid immediately corrected himself and said that the Inverness Road proceeds were put into <u>both</u> the Edward Jones and Merrill Lynch accounts: "Part of it is Merrill Lynch… And then the rest into Edward Jones." This is consistent with Omid's earlier testimony, that the Inverness Road sale proceeds "went to three different places. The majority of it … went to Edward Jones … and I moved about $25,000 in Merrill Edge account." (D1/187.) Moreover, where Laudan's marital interest in the Inverness Road proceeds has already been recognized and fully credited to her through the Edward Jones account (A. 67, ¶34; A. 68, ¶41), her assertion now that the Merrill Edge account <u>still</u> holds a marital component both ignores the stipulation and would appear to be double-dipping.

Def. Exh. 105, Retirement/Profit Sharing statement; Def. Exh. 106: ESOP statement.)

The court determined the two accounts were Omid's non-marital property. (A. 68, ¶ 43.) Laudan's brief accepts that Omid was claiming non-marital interests in both accounts. (Blue Br. 37.)

Omid testified, without objection by Laudan, that he knew the balance of the profit-sharing account prior to marriage by reviewing a statement.[12] (D1/200.) Laudan does not identify any trial evidence showing that deposits were made into the accounts during the marriage or establishing that any increase in the accounts' values was due to the investment of marital funds, property or labor, in order to establish a marital component of the accounts. *See* 19-A M.R.S. § 953(2)(E)(2)(a), (b). Absent such proof by Laudan, the court's determination that both Lanco accounts remained Omid's non-marital property was not clearly erroneous.

5. *The Court's Assignment Of An Imputed Income For Omid Was Supported By Competent Evidence.*[13]

When a court determines that a party is voluntarily underemployed, the court may assign an imputed income to that party for purposes of determining child

[12] Later at trial the court sustained an objection to Omid's reference to an ESOP account statement on the basis that it had not been provided to Laudan's counsel. (D3/296-298.) The court recognized the absence of supporting documentary evidence would go "to the weight of the testimony … the weight of the evidence." (D3/296-297.)

[13] Laudan addresses the imputed income issue under the "Property Distribution" Argument section of her brief. See Blue Brief 37-38. Imputed income pertains, here, to establishing child support, not property distribution. For ease of reference Omid addresses this issue in the same order presented in the Blue Brief.

support. 19-A M.R.S. § 2001(5)(D); *see Gooley v. Fradette*, 2024 ME 3, ¶ 20, __ A.3d __. Factual findings supporting the determination of income are reviewed for clear error. *Whitmore*, 2023 ME 3, ¶ 10, 288 A.3d 799. The court should provide "findings regarding the amount of and basis for the income imputed." *Ehret*, 2016 ME 43, ¶ 14, 135 A.3d 101.

Here, the court made findings sufficient to support its determination of Omid's imputed income. (A. 69-70, ¶¶ 51-57.) The court found that Omid was voluntarily underemployed. It determined that Omid was capable of working 40 hours per week and had previously been earning an hourly wage of $44.56, concluding that he had the capacity to earn $92,684.80 annually.[14] (A.70, ¶ 54.) Laudan does not challenge this earning capacity. (Blue Br. 37.)

Plaintiff owned rental property which he expected to generate $40,716 in gross income in 2023 (A. 75, ¶ 55), and in tax year 2021 declared a "total rental real estate loss of $12,831." (A. 70, ¶ 55; see D1/222-224.). Although the court did not recite its final calculation, its findings on Omid's annual wages earning capacity, minus his most recent annual rental real estate losses, equals $79,873 – that is, essentially the $80,000 income the court imputed to him.

[14] $44.56 per hour times 40 hours per week times 52 weeks per year equals $92,684.80.

Laudan asserts Omid had other income that the court erroneously omitted when calculating Omid's total income, including dividends, capital gains, and profit from Facebook Marketplace transactions. (Blue Br. 37-38.)

A parent's income for purposes of determining child support only includes income from ongoing sources. 19-A M.R.S. § 2001(5)(A).[15] Dividends and capital gains might fit within this limitation if from an ongoing source. *See id*. (listing dividends and capital gains as possible sources). Thus, a one-time receipt of a capital gain would "not constitute gross income because it is not from an ongoing source…" *Maine Family Law* § 6.5[2][b]. A one-time receipt of a dividend would be treated similarly. Here, there was no indication on the documents cited by Laudan[16] that either the dividends or capital gains reported by Omid were ongoing sources of income. Nor has Laudan cited trial evidence establishing a basis for assigning an ongoing value to them.

Laudan further argues that the court erred when it did not include alleged income from Omid's sale of items on Facebook Marketplace. The court heard extensive testimony from Omid about these transactions and that, all told, he had in the past two years realized perhaps $7,000 in "profit." (D1/158-162.)

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[15] 19-A M.R.S. § 2001(5)(A) states that "Gross income includes income from an ongoing source …"

[16] See Blue Br. 37-38, citing Omid's Child Support Affidavit, reporting dividend income; and Def. Exh. 133, listing capital gains.

Laudan cites documents (Blue Br. 38, note 9[17]) that do not support her claim of $28,675 in ongoing "gains" – in fact, the values she cites as "gains" do not appear on those pages at all. What does appear on each page are lines labelled "Aggregate Profit or (Loss)" and "Realized Profit or (Loss)," and on each page the values entered on those lines are "$0.00." Further, Laudan has selected transactions where "Proceeds" exceeded "Cost or Basis" but doesn't account for any other costs of sales or recognize the many other transactions within that same Exhibit (Defendant's #146) where "Cost or Basis" by itself exceeded "Proceeds." Moreover, Laudan points to no evidence, even to the extent Omid had an aggregate "Realized Profit" in a past year, establishing that any particular amount would be a predictable "ongoing source" of income encompassed by 19-A M.R.S. §2001(5)(A).

The meaning and weight of the testimony was for the court to assess. Here the court found, supported by competent evidence, that Omid's "bartering transactions" through Facebook Marketplace did not constitute income for purposes of child support. (A. 71.)

The court committed no error when it did not include dividends, capital gains or Facebook sales in its calculation of Omid's imputed income.

[17] In Blue Br. at footnote 9, Laudan cites transaction records appearing in Defendant's trial exhibit No. 146, at pages 143, 151, 152 and 153. In the copy of Exhibit 146 provided to Omid by Laudan's counsel, the referenced transactions appear on pages 154, 155, 156 and 157.

6. *The Court Committed No Error In Its Decision To Not Assign Values To Certain Items Of Personal Property, Or In Its Decision To Distribute That Property To The Party Possessing Or Controlling It.*

Property valuation is reviewed for clear error. *Murphy*, 2003 ME 17, ¶ 19, 816 A.2d 814. Property distribution is reviewed for an abuse of discretion.

Laudan argues (Blue Br. 38-40) that the court erred when it failed to assign specific values to many articles of the parties' marital personal property, and that it further erred when it failed to distribute that property, rendering it omitted property under 19-A M.R.S. § 953(9). Neither contention is correct.

The parties presented the court with no agreed-upon distribution of the remaining personal property. Omid (A. 201-203, 58 items) and Laudan (Def. Exh. 147, 71 items) each submitted lengthy lists of tangible personal property. Each list had items not on the other, and many items that matched were given widely disparate values.[18]

The court identified, valued and distributed certain higher-value tangible property of the parties. (A. 68, ¶ 39.) Beyond these determinations, the court found that "neither party provided the court with sufficient evidence as to other …

[18] Following are examples of the spread in values assigned to items that each party had listed.

2 shotguns (Browning, Winchester): Laudan $3,800, Omid (Item 16) $500.
West Elm tall dresser: Laudan $70, Omid (Item 56) $1,100.
West Elm Hieroglyph Rug: Laudan $70, Omid (Item 53) $800.
Large Persian rug: Laudan: $10,000, Omid (Item 1) $1,000.

personal property or its value in his or her control; and therefore, it is not possible for the court to make findings of the present day values of the items." (A. 69, ¶ 50.)

Given this lack of evidence as to both the identity and value of the property, and the statutory requirement for the court to distribute all property, 19-A M.R.S. § 953(1), the court awarded each party "those items of tangible personal property in his or her name, possession or control." (A. 45(B)). Omid also offered, in his testimony, to allow Laudan into the marital home to identify and retrieve those additional items that she owned or wanted (D1/202-203), and the court incorporated that offer into its findings. (A. 69, ¶ 49.)

Given an insufficient evidentiary record and the absence of an agreed-upon distribution list on one hand, and the statutory requirement that the court distribute the parties' property on the other, the court acted properly. In *Hafford v. Hafford*, 201 ME 128, 8 A.3d 629, this Court reviewed a property award, similar to here, allocating to one party of "[a]ll other personal property, tangible and intangible, currently in the possession or subject to the control" of that party. *Id*. ¶ 7.

This Court found no error and that the trial court had not omitted property, in that the property award language was sufficient to include a pension not otherwise identified in the divorce judgment. *Id*. ¶ 9. "The bare fact that the pension was not explicitly referenced in the divorce judgment does not compel a conclusion that it

was omitted property." *Id*. There was no mention in *Hafford* that the parties knew the exact value of the pension, nor had the trial court assigned a value to it.

Applied here, *Hafford* shows that a divorce court is permitted to dispose of personal property without explicitly identifying it or establishing its value, by making a clear allocation of personal property to the person in possession or control of it. That is what the court did here, acting within its discretion.

CONCLUSION

Appellee Omid Ghayebi respectfully requests that the orders of the District Court be affirmed in all respects.

Dated: June 3, 2024.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, Kenneth P. Altshuler, Esq., certify that I have caused two copies of Appellee Omid Ghayebi's brief to be served upon Appellant's counsel, and two copies to the Guardian ad Litem, by mailing the same through the U.S. Postal Service, and also one electronic copy to each party by email, addressed as follows:

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