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Clair v. Clair Clerk's Record v. 3 Dckt. 39188

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Vol 3 of 7

SUPREME COURT OF THE STATE OF IDAHO

CHARLES MALCOM CLAIR, JR.,

Plaintiff-Respondent

vs.

LAW CLERK
TRACY JO CLAIR

Defendant-Appellant

Honorable Rick Carnaroli Magistrate Judge

Appealed from the District Court of the Sixth
Judicial District of the State of Idaho, in and for
Bannock County.

Nick L. Nielson

Nielson Law Office

Attorney X For Appellant X

Frederick F. Belzer

Attorney at Law

Attorney X For Respondent X

Filed this _____ day of _____

2008

JAN - 3 2012

Clerk

Deputy

39188

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHARLES MALCOM CLAIR, JR.,)

Plaintiff-Respondent,)

vs.)

TRACY JO CLAIR,)

Defendant-Appellant,)

Supreme Court No. 39188-2011

Volume III

CLERK'S RECORD

Appeal from the District Court of the Sixth Judicial District of the State of
Idaho, in and for the County of Bannock.

Before **HONORABLE** Rick Carnaroli Magistrate Judge.

For Appellant:

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For Respondent:

Frederick F. Belzer
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22

TABLE OF CONTENTS

VOLUME I

ORDER GRANTING MOTION FOR PERMISSION TO APPEAL, filed 11-3-11 1

ORDER EXPEDITING APPEAL, filed 12-7-11 2

COMPLAINT FOR DIVORCE, filed 7-19-11..... 3

STIPULATION, filed 7-29-10..... 20

ORDER ON STIPULATION, filed 7-30-10 22

STIPULATION TO CONSOLIDATE, filed 8-6-10 24

ORDER GRANTING STIPULATION TO CONSOLIDATE, filed 8-10-10..... 26

ANSWER TO COMPLAINT, filed 8-11-10 28

VERIFIED COMPLAINT FOR DIVORCE, filed 7-22-10 31

ANSWER TO VERIFIED COMPLAINT FOR DIVORCE, filed 8-18-10 46

STIPULATION, filed 9-9-10..... 49

ORDER ON STIPULATION, filed 9-10-10 51

NOTICE OF SUBSTITUTION OF COUNSEL, filed 9-9-10..... 53

MINUTE ENTRY AND ORDER, filed 10-4-10 55

MINUTE ENTRY AND ORDER, filed 10-8-10 56

ORDER DENYING MOTION FOR CHANGE OF VENUE, filed 11-5-10..... 57

DEFENDANT TRACY CLAIR’S OBJECTION TO PLAINTIFF’S MOTION FOR CHANGE
OF VENUE IRCP 12(B) (3), filed 10-8-10 61

STIPULATION, filed 11-24-10.....	67
ORDER ON STIPULATION, filed 12-1-10	69
STIPULATION FOR APPOINTMENT OF CUSTODY EVALUATOR, filed 1-14-11	71
ORDER APPOINTING OF CUSTODY EVALUATOR, filed 1-19-11.....	72
STIPULATION, filed 1-26-11.....	74
STIPULATION TO CONTINUE, filed 3-11-11	76
MINUTE ENTRY AND ORDER, filed 4-29-11	80
MINUTE ENTRY AND ORDER CONFIRMING TRIAL, filed 5-24-11	83
PLAINTIFF’S PRE-TRIAL MEMORANDUM, filed 5-20-11	84
MINUTE ENTRY AND ORDER, filed 6-28-11	92
DECREE OF LEGAL SEPARATION, filed 6-28-11	94
FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER, filed 8-11-11	96
JUDGMENT AND DECREE OF DIVORCE, filed 8-16-11	177

VOLUME II

AMENDED FINDINGS OF FACT CONCLUSION OF LAW AND ORDER, filed 8-25-11	198
AMENDED JUDGMENT AND DECREE OF DIVORCE, filed 8-25-11	280
DEFENDANT TRACY CLAIR’S MOTION TO STAY PORTIONS OF THE COURT’S AMENDED JUDGMENT AND DECREE OF DIVORCE AND AMENDED FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER ENTERED AUGUST 25, 2011, filed 8-26-11 ...	302
MEMORANDUM IN SUPPORT OF DEFENDANT TRACY CLAIR’S MOTION TO STAY CERTAIN PORTIONS OF THE COURT’S AMENDED JUDGMENT AND DECREE OF	

DIVORCE AND AMENDED FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER
ENTERED AUGUSTS 25, 2011, filed 8-26-11 304

DEFENDANT TRACY CLAIR’S MOTION FOR PERMISSION TO APPEAL THE COURT’S
AMENDED FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER AND
AMENDED JUDGMENT AND DECREE OF DIVORCE ENTERED AUGUST 25, 201, filed
8-26-11 309

MEMORANDUM IN SUPPORT OF DEFENDANT TRACY CLAIR’S MOTION FOR
PERMISSION TO APPEAL THE COURT’S AMENDED FINDINGS OF FACT
CONCLUSION OF LAW AND ORDER AND AMENDED JUDGMENT AND DECREE OF
DIVORCE ENTERED AUGUST 25, 2011, 311

AFFIDAVIT OF TRACY J. CLAIR, filed 5-26-11 317

PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO STAY PORTIONS OF THE
COURT’S AMENDED JUDGMENT AND DECREE OF DIVORCE AND AMENDED
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER ENTERED AUGUST 25,
2011,..... 369

MOTION TO EXPEDITE, filed 9-1-11 372

ORDER GRANTING MOTION TO EXPEDITE, filed 9-2-11 373

ORDER DENYING MOTION FOR PERMISSION TO APPEAL TO THE SUPREME
COURT OF IDAHO, filed 9-9-11 375

NOTICE OF APPEAL FROM MAGISTRATE COURT TO DISTRICT COURT, filed 10-6-11 382

APPELLANT’S STATEMENT OF ISSUES ON APPEAL, filed 10-20-11 385

VOLUME III

SECOND AMENDED FINDING OF FACT CONCLUSIONS OF LAW AND ORDER, filed
11-10-11 388

SECOND AMENDED JUDGMENT AND DECREE OF DIVORCE, filed 11-10-11 470

NOTICE OF APPEAL FROM MAGISTRATE COURT TO IDAHO SUPREME COURT, filed
11-10-11 493

NOTICE OF REQUEST FOR ADDITIONAL DOCUMENTS IN THE RECORD IN THE APPEAL FROM MAGISTRATE COURT TO IDAHO SUPREME COURT, filed 11-23-11.....	501
NOTICE OF DISMISSAL OF APPEAL FROM MAGISTRATE COURT TO DISTRICT COURT, filed 11-29-11	503
CLERK’S CERTIFICATE OF APPEAL (Received back from Supreme Court) filed 11-25-11	505
NOTICE OF LODGING.....	507
CLERK’S CERTIFICATE	508
CERTIFICATE OF EXHIBITS.....	510
CERTIFICATE OF SERVICE	513

INDEX

AFFIDAVIT OF TRACY J. CLAIR, filed 5-26-11 317

AMENDED FINDINGS OF FACT CONCLUSION OF LAW AND ORDER, filed 8-25-11 198

AMENDED JUDGMENT AND DECREE OF DIVORCE, filed 8-25-11 280

ANSWER TO COMPLAINT, filed 8-11-10 28

ANSWER TO VERIFIED COMPLAINT FOR DIVORCE, filed 8-18-10 46

APPELLANT’S STATEMENT OF ISSUES ON APPEAL, filed 10-20-11 385

CERTIFICATE OF EXHIBITS 510

CERTIFICATE OF SERVICE 513

CLERK’S CERTIFICATE OF APPEAL (Received back from Supreme Court) filed 11-25-11 505

CLERK’S CERTIFICATE 508

COMPLAINT FOR DIVORCE, filed 7-19-11 3

DECREE OF LEGAL SEPARATION, filed 6-28-11 94

DEFENDANT TRACY CLAIR’S MOTION FOR PERMISSION TO APPEAL THE COURT’S
AMENDED FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER AND
AMENDED JUDGMENT AND DECREE OF DIVORCE ENTERED AUGUST 25, 201, filed
8-26-11 309

DEFENDANT TRACY CLAIR’S MOTION TO STAY PORTIONS OF THE COURT’S
AMENDED JUDGMENT AND DECREE OF DIVORCE AND AMENDED FINDINGS OF
FACT CONCLUSIONS OF LAW AND ORDER ENTERED AUGUST 25, 2011, filed 8-26-11 ... 302

DEFENDANT TRACY CLAIR’S OBJECTION TO PLAINTIFF’S MOTION FOR CHANGE
OF VENUE IRCP 12(B) (3), filed 10-8-10 61

FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER, filed 8-11-11 96

JUDGMENT AND DECREE OF DIVORCE, filed 8-16-11	177
MEMORANDUM IN SUPPORT OF DEFENDANT TRACY CLAIR’S MOTION FOR PERMISSION TO APPEAL THE COURT’S AMENDED FINDINGS OF FACT CONCLUSION OF LAW AND ORDER AND AMENDED JUDGMENT AND DECREE OF DIVORCE ENTERED AUGUST 25, 2011,	311
MEMORANDUM IN SUPPORT OF DEFENDANT TRACY CLAIR’S MOTION TO STAY CERTAIN PORTIONS OF THE COURT’S AMENDED JUDGMENT AND DECREE OF DIVORCE AND AMENDED FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER ENTERED AUGUSTS 25, 2011, filed 8-26-11	304
MINUTE ENTRY AND ORDER CONFIRMING TRIAL, filed 5-24-11	83
MINUTE ENTRY AND ORDER, filed 10-4-10	55
MINUTE ENTRY AND ORDER, filed 10-8-10	56
MINUTE ENTRY AND ORDER, filed 4-29-11	80
MINUTE ENTRY AND ORDER, filed 6-28-11	92
MOTION TO EXPEDITE, filed 9-1-11	372
NOTICE OF APPEAL FROM MAGISTRATE COURT TO DISTRICT COURT, filed 10-6-11	382
NOTICE OF APPEAL FROM MAGISTRATE COURT TO IDAHO SUPREME COURT, filed 11-10-11	493
NOTICE OF DISMISSAL OF APPEAL FROM MAGISTRATE COURT TO DISTRICT COURT, filed 11-29-11	503
NOTICE OF LODGING.....	507
NOTICE OF REQUEST FOR ADDITIONAL DOCUMENTS IN THE RECORD IN THE APPEAL FROM MAGISTRATE COURT TO IDAHO SUPREME COURT, filed 11-23-11.....	501
NOTICE OF SUBSTITUTION OF COUNSEL, filed 9-9-10.....	53

ORDER APPOINTING OF CUSTODY EVALUATOR, filed 1-19-11..... 72

ORDER DENYING MOTION FOR CHANGE OF VENUE, filed 11-5-10..... 57

ORDER DENYING MOTION FOR PERSMISSION TO APPEAL TO THE SUPREME COURT OF IDAHO, filed 9-9-11 375

ORDER EXPEDITING APPEAL, filed 12-7-11 2

ORDER GRANTING MOTION FOR PERMISSION TO APPEAL, filed 11-3-11 1

ORDER GRANTING MOTION TO EXPEDITE, filed 9-2-11 373

ORDER GRANTING STIPULATION TO CONSOLIDATE, filed 8-10-10..... 26

ORDER ON STIPULATION, filed 12-1-10 69

ORDER ON STIPULATION, filed 7-30-10 22

ORDER ON STIPULATION, filed 9-10-10 51

PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO STAY PORTIONS OF THE COURT’S AMENDED JUDGMENT AND DECREE OF DIVORCE AND AMENDED FINDGINS OF FACT, CONCLUSION OF LAW AND ORDER ENTERED AUGUST 25, 2011,..... 369

PLAINTIFF’S PRE-TRIAL MEMORANDUM, filed 5-20-11 84

SECOND AMENDED FINDING OF FACT CONCLUSIONS OF LAW AND ORDER, filed 11-10-11 388

SECOND AMENDED JUDGMENT AND DECREE OF DIVORCE, filed 11-10-11 470

STIPULATION FOR APPOINTMENT OF CUSTODY EVALUATOR, filed 1-14-11 71

STIPULATION TO CONSOLIDATE, filed 8-6-10 24

STIPULATION TO CONTINUE, filed 3-11-11 76

STIPULATION, filed 11-24-10..... 67

STIPULATION, filed 1-26-11..... 74

STIPULATION, filed 7-29-10..... 20

STIPULATION, filed 9-9-10..... 49

VERIFIED COMPLAINT FOR DIVORCE, filed 7-22-10 31

VOLUME I

VOLUME II

VOLUME III

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User		Judge
7/19/2010	LOCT	MEGAN	Sent to Nichole / Judge Carnaroli with Order Granting Motion to Expedite on 12-9-11.	Rick Carnaroli
			SUPREME COURT APPEAL.	
	NCDR	MEGAN	New Case Filed-Domestic Relations	Rick Carnaroli
	COMP	MEGAN	Complaint For Divorce- by plaintiff Charles Clair Jr, thru PA May	Rick Carnaroli
	JPRI	MEGAN	Joint Prohibitive Order IRCP (65(G) - ISSUED	Rick Carnaroli
	SMIS	MEGAN	Summons Issued	Rick Carnaroli
	FLIS	MEGAN	Family Law Information Sheet Filed- Child of the parties [REDACTED]	Rick Carnaroli
		MEGAN	Document sealed Filing: B1 - Divorce Paid by: May Rammell & Thompson Receipt number: 0025696 Dated: 7/20/2010 Amount: \$129.00 (Check) For:	Rick Carnaroli
	ATTR	JENNEFER	Plaintiff: Clair, Charles Clair Jr Attorney Retained Gregory C May	Rick Carnaroli
	OAPW	JENNEFER	Order to Attend Focus on Children & Silver Linings- Set for: 8/3/10 @ 6:00 PM	Rick Carnaroli
7/29/2010	STIP	JENNEFER	Stipulation- Signed by: DA Nielson on 7/23/10 & PA May on 7/27/10	Rick Carnaroli
	AFFD	JENNEFER	Affidavit of Service- Defendant, Tracy Clair, was served with summons & complaint on 7/26/10	Rick Carnaroli
7/30/2010	ORDR	JENNEFER	Order on Stipulation- Every term & condition of stipulation is GRANTED. s/ Carnaroli on 7/30/10	Rick Carnaroli
8/3/2010	DNAC	KROMRIEL	Defendant did not attend Parenting Class-lives out of state-not reset	Rick Carnaroli
	PNAC	KROMRIEL	Plaintiff did not attend Parenting Class--did not reset -everything stipulated	Rick Carnaroli
8/4/2010	APPL	JENNEFER	Application For Waiver of Attendance at Parenting Workshop- GRANTED, parties attendance is excused. s/ Carnaroli on 8/4/10	Rick Carnaroli
8/6/2010	STIP	JENNEFER	Stipulation to Consolidate- Signed by: DA Nielson on 8/4/10 & PA May on 8/5/10	Rick Carnaroli
8/10/2010	CONS	JENNEFER	Order Granting Stipulation to Consolidate- Divorce case # CV-2010-778 (Filed by defendant Tracy Clair in Latah County) is to be consolidated with Bannock County case # CV-2010-2989-DR. s/ Carnaroli on 8/10/10	Rick Carnaroli
8/11/2010	ANSW	JENNEFER	Answer to Complaint- by defendant Tracy Clair, thru DA Nielson	Rick Carnaroli
	ATTR	JENNEFER	Defendant: Clair, Tracy Jo Attorney Retained Nick L Nielson	Rick Carnaroli
8/18/2010	NOTC	JENNEFER	Notice of Service- Plaintiff's requests for discovery from defendant was served on defendant Tracy Clair thru DA Nielson on 8/18/10	Rick Carnaroli

Time: 10:34 AM

ROA Report

Page 2 of 9

Case: CV-2010-0002989-DR Current Judge: Rick Carnaroli

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User	Judge
8/18/2010	ANSW	JENNEFER	Answer to Verified Complaint For Divorce- by plaintiff Charles Clair thru PA May (For Latah County Case # CV-10-778)
8/24/2010	APPL	JENNEFER	Application For Waiver of Attendance at Parenting Workshop- by defendant Tracy Clair thru DA Nielson
8/25/2010	ORDR	JENNEFER	Order Granting Application For Waiver of Attendance at Parenting Workshop- Defendant Tracy Clair excused from attending parenting workshop. s/ Carnaroli on 8/25/10
8/27/2010	HRSC	NICHOLE	Hearing Scheduled (Scheduling Conference 09/30/2010 01:30 PM)
8/30/2010	ORDR	NICHOLE	Order for Scheduling Conference /s/ J Carnaroli 8/27/10
9/9/2010	STIP	JENNEFER	Stipulation- signed by: PA Belzer & DA Nielson on 9/9/10
	SUBC	JENNEFER	Notice of Substitution of Counsel- Frederick Belzer substitutes in place of Gregory May as PA
	ATTR	JENNEFER	Plaintiff: Clair, Charles Malcolm Jr Attorney Retained Frederick F Belzer
9/10/2010	ORDR	JENNEFER	Order on Stipulation- Terms of stipulation GRANTED. s/ Carnaroli on 9/10/10
9/30/2010	INHD	NICHOLE	Hearing result for Scheduling Conference held on 09/30/2010 01:30 PM: Interim Hearing Held
10/1/2010	MOTN	JENNEFER	Motion For Change of Venue IRCP 12(b)(3)- by plaintiff Charles Clair thru PA Belzer
	HRSC	JENNEFER	Notice of Hearing- Hearing Scheduled (Motion 10/08/2010 10:00 AM) motion for change of venue- by plaintiff Charles Clair thru PA Belzer
10/4/2010	MEOR	NICHOLE	Minute Entry and Order /s/ J Carnaroli 10-1-10 (plaintiff's motion for change of venue nnoticed for hearing on 10/8/10 @10am)
	AFFD	JENNEFER	Affidavit of Charles Malcolm Clair Jr- by plaintiff Charles Clair thru PA Belzer
	MEOR	JENNEFER	Minute Entry and Order- Scheduling Conference held on 9/30/10. Court set hearing on plaintiff's motion for change of venue for: 10/8/10 @ 10:00 am. s/ Carnaroli on 10/1/10
10/8/2010	INHD	NICHOLE	Hearing result for Motion held on 10/08/2010 10:00 AM: Interim Hearing Held motion for change of venue
	MEOR	NICHOLE	Minute Entry and Order /s/ J Carnaroli 10-8-10 (court heard oral argument on Plaintiff's motion for change of venue and took the same under advisement)
		NICHOLE	Defendant Tracy CLair;s Objection to Plaintiff's Motion for Change of Venue IRCP 12(B)(3); aty Nick Nielson

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User		Judge
11/5/2010	ORDR	NICHOLE	Order Denying Motion for Change of Venue /s/ J Carnaroli 11-5-10 (crt concludes that venue is proper in Bannock County)	Rick Carnaroli
11/24/2010	STIP	CINDYBF	Stipulation- (re: custody & visitation for 12-10 to 1-11) s/PA Belzer & DA Neilsen.	Rick Carnaroli
12/1/2010	ORDR	CINDYBF	Order on Stipulation- s/Carnaroli 11-30-10.	Rick Carnaroli
12/13/2010	MOTN	JENNEFER	Motion For Custody Evaluation- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
	MOTN	JENNEFER	Motion For Temporary Custody- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
	HRSC	JENNEFER	Notice of Hearing- Hearing Scheduled (Motion 01/07/2011 09:00 AM) motion for temp custody and motion & motion for custody eval- Hearing Scheduled (Motion 01/07/2011 09:00 AM) motion for temp custody & custody eval- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
12/22/2010	MOTN	JENNEFER	Motion For Temporary Orders- by Defendant Tracy Clair thru PA Nielson,	Rick Carnaroli
	AFFD	JENNEFER	Affidavit of Tracy J Clair- by Defendant Tracy Clair thru PA Nielson	Rick Carnaroli
	OBJT	JENNEFER	Objection to Plaintiff's Motion For Temporary Custody- by defendant Tracy Clair thru DA Nielson	Rick Carnaroli
12/23/2010	HRSC	NICHOLE	Amended Notice of Hearing- Hearing Scheduled (Motion 01/10/2011 02:30 PM)- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
12/27/2010		JENNEFER	Certificate Of Service- Motion for temporary custody, motion for custody evaluation, & amended notice of hearing was served on defendant Tracy Clair thru DA Neilson on 12/22/10- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
12/28/2010	CONT	NICHOLE	Notice of Hearing on Defendant's Motion For Temporary Orders- Prior setting continued: (Motion 01/10/2011 10:30 AM) motion for temp custody and motion & motion for custody eval- by defendant Tracy Clair thru DA Nielson	Rick Carnaroli
1/4/2011	CONT	NICHOLE	Amended Notice of Hearing- Prior setting continued to: (Motion 01/26/2011 09:00 AM) motion for temp custody and motion & motion for custody eval- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
1/14/2011	STIP	JENNEFER	Stipulation For Appointment of Custody Evaluator- signed by: PA Belzer on 1/14/11 & DA Nielsen on 1/13/11	Rick Carnaroli
1/19/2011	CUSE	JENNEFER	Order Appointing Custody Evaluator- Linwood Vareen appointed as evaluator. Plaintiff Charles Clair shall pay for cost of evaluation. There shall be no ex parte communication between the atty's & evaluator. s/ Carnaroli on 1/19/11	Rick Carnaroli

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User		Judge
1/25/2011	CONT	NICHOLE	Second Amended Notice of Hearing on Defendant's Motion For Temporary Orders- Prior setting continued to: (Motion 02/16/2011 03:00 PM)- by defendant Tracy Clair thru DA Nielson	Rick Carnaroli
1/26/2011		JENNEFER	Second Amended Notice of Hearing- Prior setting continued to: (Motion 02/16/2011 03:00 PM)- by plaintiff Charles Malcolm thru PA Belzer	Rick Carnaroli
	STIP	JENNEFER	Stipulation- signed by: PA Belzer & DA Nielson on 1/25/2011	Rick Carnaroli
2/3/2011	CONT	NICHOLE	Third Amended Notice of Hearing- Continued (Motion 03/14/2011 10:00 AM) motion for temporary orders- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
3/11/2011	STIP	NICHOLE	Stipulation to Continue /s/ Nick Nielson and Fred Belzer	Rick Carnaroli
3/14/2011	HRVC	NICHOLE	Hearing result for Motion held on 03/14/2011 10:00 AM: Hearing Vacated motion for temporary orders- stip to continue filed	Rick Carnaroli
3/16/2011	HRSC	NICHOLE	Hearing Scheduled (Motion 04/13/2011 03:00 PM) motion for custody	Rick Carnaroli
	HRSC	NICHOLE	Hearing Scheduled (Motion 04/13/2011 03:00 PM) motion for interim orders	Rick Carnaroli
	CONT	NICHOLE	Third Amended Notice of Hearing on Defendant's Motion For Temporary Orders- Prior setting continued to: (Motion 04/25/2011 01:00 PM)- by defendant Tracy Clair thru DA Nielson	Rick Carnaroli
3/17/2011	CONT	NICHOLE	Amended Notice of Hearing- Prior setting continued to: (Motion 04/25/2011 01:00 PM) motion for custody- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
3/30/2011		JENNEFER	Note of Issue & Request For Trial Setting- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
3/31/2011	HRSC	NICHOLE	Hearing Scheduled (Scheduling Conference 04/25/2011 01:00 PM)	Rick Carnaroli
	ORDR	NICHOLE	Order for Scheduling Conference /s/ J Carnaroli 3/31/11	Rick Carnaroli
4/6/2011	RESP	JENNEFER	Response to Note of Issue & Request For Trial Setting- by Defendant Tracy Clair thru DA Nielson	Rick Carnaroli
4/7/2011	AFFD	JENNEFER	Affidavit of Charles M Clair Jr in Support of Motion For Temporary Custody- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
4/19/2011	AFFD	JENNEFER	Affidavit of Tracy J Clair in Response to The Affidavit of Charles M Clair, Jr- by defendant Tracy Clair thru DA Nielson	Rick Carnaroli
4/28/2011	HRVC	NICHOLE	Hearing result for Motion held on 04/25/2011 01:00 PM: Hearing Vacated motion for custody-agreement	Rick Carnaroli

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User	Judge
4/28/2011	HRVC	NICHOLE	Hearing result for Motion held on 04/25/2011 01:00 PM: Hearing Vacated motion for interim orders-agreement
	INHD	NICHOLE	Hearing result for Scheduling Conference held on 04/25/2011 01:00 PM: Interim Hearing Held
	HRSC	NICHOLE	Hearing Scheduled (Pre-trial Conference 05/23/2011 01:15 PM)
	HRSC	NICHOLE	Hearing Scheduled (Court Trial 06/01/2011 08:30 AM) 1/2 day (9am -12pm)
	HRSC	NICHOLE	Hearing Scheduled (Court Trial 06/02/2011 08:30 AM)
4/29/2011	MEOR	NICHOLE	Minute Entry and Order /s/ J Carnaroli 4/29/11 (counsel informed the crt the parties reached temporary agreement as to child support & custody & recited the same for the record; matter set for ptretrial 5/23/11@1:15pm and trial set 1/2 day on 6/1/11@9am and 6/2/11@am)
	MEOR	JENNEFER	Minute Entry and Order- Motion hearing held on 4/25/11. Court set matter for Trial on 6/1/11 @ 9:00 am. Minor child shall be in the physical custody of defendant Tracy Clair at all times not set forth for plaintiff until further order of the court. Plaintiff shall pay defendant temporary child support for the month of May in the amount \$1,586.72 due by 4/29/11 @ noon. s/ Carnaroli on 4/29/11
5/20/2011		NICHOLE	Plaintiff's Pretrial Memorandum; Fred Belzer
	MOTN	NICHOLE	Motion to Compel; Fred Belzer
5/23/2011	INHD	NICHOLE	Hearing result for Pre-trial Conference held on 05/23/2011 01:15 PM: Interim Hearing Held
5/24/2011	MEOR	NICHOLE	Minute Entry and Order Confirming Trial /s/ J Carnaroli 5/24/11
		NICHOLE	Pre-Trial Memorandum; Nick Nielson
6/1/2011	INHD	NICHOLE	Hearing result for Court Trial held on 06/01/2011 08:30 AM: Interim Hearing Held 1/2 day (8:30am -12pm)
6/6/2011	INHD	NICHOLE	Hearing result for Court Trial held on 06/02/2011 08:30 AM: Interim Hearing Held
6/20/2011		JENNEFER	Plaintiff Charles Malcolm Clair Jr's Submission of Proposed Interim Custody Schedule- by PA Belzer
	AFFD	JENNEFER	Affidavit of Charles Malcolm Clair Jr in Support of His Proposed Interim Custody Schedule- by PA Belzer
		JENNEFER	Request For Additional Time to Submit Documentation in Support of Defendant's Proposed Parenting Time Schedule- by DA Nielson

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User		Judge
6/20/2011	AFFD	JENNEFER	Affidavit of Nick L Nielson- by DA Nielson	Rick Carnaroli
		JENNEFER	Brief Supporting Request For Parenting Time Schedule- by DA Nielson	Rick Carnaroli
6/21/2011	AFFD	JENNEFER	Affidavit of Tracy J Clair- by DA Nielson	Rick Carnaroli
	AFFD	JENNEFER	Affidavit of Linwood G Verreen- by DA Nielson	Rick Carnaroli
	MOTN	JENNEFER	Motion For Entry of Decree of Divorce- by PA Belzer	Rick Carnaroli
	MOTN	JENNEFER	Motion For Expedited Hearing- by PA Belzer	Rick Carnaroli
6/23/2011	HRSC	JENNEFER	Order For Expedited Hearing- Hearing Scheduled (Motion 06/28/2011 10:30 AM). s/ Carnaroli on 6/23/11	Rick Carnaroli
		JENNEFER	Objection to Defendant's Submission & Motion to Strike- by PA Belzer	Rick Carnaroli
6/27/2011	MOTN	JENNEFER	Motion to Strike Evidence Submitted With Motion For Entry of Decree of Divorce & Motion to Expedite- by DA Nielson	Rick Carnaroli
		JENNEFER	Decree of Legal Separation- s/ Carnaroli on 6/28/11	Rick Carnaroli
6/28/2011	NOTC	JENNEFER	Notice of Hearing- Motion for entry of decree of divorce & objection to defendant's submission & motion to strike set for: 6/28/11 @ 2:30 PM- by PA Belzer	Rick Carnaroli
		MEOR	JENNEFER	Minute Entry and Order- Motion for entry of decree of divorce held on 6/28/11. Court ordered that the parties are awarded a decree of legal separation. s/ Carnaroli on 6/28/11	Rick Carnaroli
7/18/2011	HRSC	NICHOLE	Hearing Scheduled (Court Trial 07/21/2011 08:30 AM)	Rick Carnaroli
		NICHOLE	Hearing Scheduled (Court Trial 07/22/2011 08:30 AM)	Rick Carnaroli
7/21/2011	CTST	NICHOLE	Hearing result for Court Trial scheduled on 07/21/2011 08:30 AM: Court Trial Started	Rick Carnaroli
7/22/2011	HRHD	NICHOLE	Hearing result for Court Trial scheduled on 07/22/2011 08:30 AM: Hearing Held	Rick Carnaroli
8/16/2011	JDMT	JENNEFER	Findings of Fact Conclusions of Law & Order- s/ Carnaroli on 8/16/11	Rick Carnaroli
		JENNEFER	Judgment & Decree of Divorce- s/ Carnaroli on 8/16/11	Rick Carnaroli
3/25/2011	JDMT	JENNEFER	Amended Findings of Fact Conclusions of Law & Order- s/ Carnaroli on 8/25/11	Rick Carnaroli
		JENNEFER	Amended Judgment & Decree of Divorce- s/ Carnaroli on 8/25/11	Rick Carnaroli

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User	Judge
8/26/2011	MOTN	JENNEFER	Defendant Tracy Clair's Motion to Stay Portions of The Court's Amended Judgment & Decree of Divorce & Amended Findings of Fact Conclusions of Law & Order Entered August 25, 2011- by DA Neilsen
	MEMO	JENNEFER	Memorandum in Support of Defendant Tracy Clair's Motion to Stay Portions of The Court's Amended Judgment & Decree of Divorce & Amended Findings of Fact Conclusions of Law & Order Entered August 25, 2011- by DA Neilsen
	MOTN	JENNEFER	Defendant Tracy Clair's Motion For Permission to Appeal The Court's Amended Findings of Fact Conclusions of Law & Order & Amended Judgment & Decree of Divorce Entered August 25, 2011- by DA Nielson
	MEMO	JENNEFER	Memorandum in Support of Defendant Tracy Clair's Motion For Permission to Appeal The Court's Amended Findings of Fact Conclusions of Law & Order & Amended Judgment & Decree of Divorce Entered August 25, 2011- by DA Nielson
	AFFD	JENNEFER	Affidavit of Tracy J Clair- by DA Nielson
9/1/2011	MOTN	JENNEFER	Motion to Expedite- by DA Nielson
		JENNEFER	Plaintiff's Opposition to Defendant's Motion to Stay Portions of The Court's Amended Judgment & Decree of Divorce & Amended Findings of Fact, Conclusions of Law & Order Entered August 25, 2011- by PA Belzer
9/2/2011	ORDR	JENNEFER	Order Granting Motion to Expedite- DENIED> s/ Carnaroli on 9/2/11
9/9/2011	ORDR	JENNEFER	Order Denying Motion For Permission to Appeal to The Supreme Court of Idaho- s/ Carnaroli on 9/8/11
9/28/2011	MISC	DCANO	IDAHO SUPREME COURT: Notice of Petition Filing. A Petition for Motion to Permission to Appeal Amended Judgment and Decree of Divorce and Amended Findings of Fact Conclusions of Law Entered August 16, 2011.
9/30/2011	MISC	DCANO	IDAHO SUPREME COURT; Document received in SC on behalf of Plaintiff 9-26-11; Statement in Opposition to Motion for Permission to Appeal Amended Judgment and Decree of Divorce and Maended Findings of Fact Conclusions of Law Entered August 16, 2011. This docuemtn will be reviewed by the SC using Docket Number 39188-2011. A subsequent Order will be issued which will grant or deny the Petition.
10/6/2011		MARLEA	Filing: L2 - Appeal, Magistrate Division to District Court Paid by: Nielson, Nick L Receipt number: 0034935 Dated: 10/6/2011 Amount: \$53.00 (Check) For: Clair, Tracy Jo (defendant)

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User	Judge
10/6/2011	NOTC	JENNEFER	Notice of Appeal From Magistrate Court to District Court- by DA Nielson
10/20/2011		JENNEFER	Appellant's Statement of Issues on Appeal- by DA Nielson
11/3/2011	MISC	DCANO	IDAHO SUPREME COURT; It hereby is Order that Defendant's Motion for Permission to Appeal Amended Judgment and Decree of Divorce and Amended Findings of Fact Conclusion of Law be, and hereby is, GRANTED and Defendant is granted leave to Appeal by permission from the magistrate court's Amended Findings of Fact Conclusion of Law and Order filed 8-25-11 in Bannock County Case No. CV-2010-2989-DR. It further Order that counsel for Defendant shall file a Notice of Appeal with the Clerk of The Dist Court within 21 days from the date of this Order, which is dated 10-31-11.
11/10/2011	ORDR	JENNEFER	Second Amended Findings of Fact Conclusions of Law & Order- s/ Carnaroli on 11/9/11
	JDMT	JENNEFER	Second Amended Judgment & Decree of Divorce- s/ Carnaroli on 11/9/11
	CSTS	JENNEFER	Case Status Changed: Closed
11/18/2011		DCANO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Nick L. Nielson Receipt number: 0040484 Dated: 11/21/2011 Amount: \$101.00 (Check) For: Clair, Tracy Jo (defendant)
	APSC	DCANO	Appealed To The Supreme Court
		DCANO	Received check # 2054 for \$100.00 for deposit on Clerk's Record.
11/21/2011	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL; Signed and Mailed to SC and Counsel on 11-21-11.
11/23/2011	MISC	DCANO	Notice of Request for Additional Documents in the Record in the Appeal from Magistrate Court to Idaho Supreme Court; Frederick F. Belzer. Atty for Respondent/Plaintiff.
11/29/2011	MISC	DCANO	Notice of Dismissal of Appeal from Magistrate Court to District Court: The reason for this dismissal is that this matter has been accepted on appeal to the Idaho Supreme Court.; Nick L. Nielson, Atty for Appellant.
12/7/2011	MISC	DCANO	IDAHO SUPREME COURT; Notice of Appeal received in SC on 11-25-11. Docket Number 39188-2011. Clerk's Record and Reporter's Transcripts must be filed in SC by 12-23-11. The Following Transcripts shall be Lodged: Court Trial 6-1-11 thru 6-3-11, Court Trial 7-21-11 thru 7-22-11, Hearing on Errors 8-24-11. Motion to Permission to Appeal 9-7-11 and Motion to Stay 9-30-11.

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User	Judge
12/7/2011	MISC	DCANO	IDAHO SUPREME COURT; Order Expediting Appeal. s/Stephen Kenyon on 12-1-11.
	MISC	DCANO	IDAHO SUPREME COURT; Clerk's Cert. received in SC on 11-25-11. Please carefully examine the Title and the Cert. and advise the Dist. Court Clerk of any errors. The title in the Cert. must appear on all Documents filed in SC.
12/8/2011	HRSC	NICHOLE	Hearing Scheduled (Motion 12/15/2011 03:30 PM)
	CSTS	NICHOLE	Case Status Changed: Closed pending clerk action
12/9/2011	MOTN	DCANO	Defendant's Motion for Clarification of the Court's Second Amended Findings of Fact Conclusions of Law and Order and Motion to Expedite.; Nick L. Nielson, Atty for Dfdt.
	MEMO	DCANO	Memorandum In Support of Defendant's Motion for Clarification of the Court's Second Amended Findings of Fact Conclusion of Law and Order and Motion to Expedite: Nick L. Nielson, Atty for Dfdt.
	AFFD	DCANO	Affidavit of Tracy J. Clair in Support of Her Motion for Clarification: Nick L. Nielson, Atty for Dfdt.
	AFFD	DCANO	Affidavit of Nick L. Nielson: Nick L. Nielson, Atty for Dfdt.
12/12/2011	MISC	DCANO	CLERK'S RECORD received in Court Records on 12-12-11.

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION**

CHARLES MALCOLM CLAIR,)
)
 Plaintiff,)
)
 vs.)
)
 TRACY JO CLAIR,)
)
 Defendant.)
)
 _____)

Case No. CV-2010-2989-DR
SECOND AMENDED
FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

2011 AUG 10 AM 8:46
DEPT. CLERK
FILED

The above entitled matter came before the court for trial on June 1, 2, and 3 and on July 21 and 22, 2011. Charles M. Clair (hereinafter “the father”) was present and represented by Frederick Belzer. Tracy Jo Clair (hereinafter “the mother”) was present and represented by Nick Nielson.

Hearing proceeded and the court heard and received evidence on the issues of property and debt division, temporary spousal support, [REDACTED] custody and [REDACTED] support. At the conclusion thereof, the court took the matter under advisement. On August 16, 2011, the court issued its findings of fact and conclusions of law and its judgment and decree of divorce.

On August 24, 2011, counsel for the parties stipulated to a hearing without notice concerning the parties’ conflicting interpretations of the court’s decision and order. The father and his counsel Frederick F. Belzer were present. The mother was represented by her counsel Nick L. Nielson. In particular, the parties had questions concerning custody of the [REDACTED] during the first four months following the entry of the custody order based

upon pages 33 and 34 of the court's findings of fact and conclusions of law. The court heard oral argument and stated what it had intended on the record and advised that it would issue amended findings of fact and conclusions of law and an amended judgment and decree of divorce.

Thereafter, the mother sought permission to appeal directly to the Idaho Supreme Court. In doing so, the mother filed her affidavit and pointed out numerous purported "[d]iscrepancies in Judge's order". *Defendant Tracy Clair's Motion for Permission to Appeal the Court's Amended Findings of Fact and Conclusions of Law and Order and Amended Judgment and Decree of Divorce Entered August 25, 2011; Affidavit of Tracy J. Clair, filed August 25, 2011, Exhibit C.* Yet another post judgment hearing was held at the behest of the mother. This court denied the mother's motion. *Order Denying Motion for Permission to Appeal to the Idaho Supreme Court, filed September 9, 2011.* Since that time, the mother sought permission to appeal to the Idaho Supreme Court and Idaho Supreme Court has allowed her direct appeal under Rule 12.1 of the Idaho Appellate Rules. *Order Granting Motion for Permission to Appeal, Supreme Court Docket No. 39188-2011, dated October 31, 2011.*

As a result of the mother's motion for permission to appeal, the court addressed some of her concerns and indicated in her affidavit and at the hearing on September 7, 2011 and advised that it would make amendments to its order to reflect the correct dates of trial (a clerical error) and to amend the order to allow the mother to return to Pocatello by January 15, 2012, so she and the child can take advantage of an alternative shared custody arrangement that required her to return on or before December 15, 2011. In addition, the court pursuant to its authority under Rule 60(a) IRCP will amend its

findings of fact, conclusions of law and order and its judgment to identify the child of the parties as "C.C.", rather than by his first and last name.

Now, the court's second amended findings of fact and conclusions of law shall be entered upon good cause appearing therefor:

Based upon a preponderance of the evidence, the court makes the following findings of fact:

FINDINGS OF FACT

1. In June 2010, the mother, father, and child were residents of Pocatello, Bannock County, Idaho. The father was a bona fide resident of the State of Idaho for at least six (6) weeks prior to the filing of his complaint. He filed his complaint on July 19, 2010 in Bannock County, Idaho.
2. The parties separated on or about June 17, 2010. The mother moved to Ely, Nevada upon separation and has resided there with her parents since June 2010. She has not been employed during the separation. In June 2010, the father moved to Moscow, Latah County, Idaho to take a new job as a physician. The father later resigned his position in Moscow, Idaho and returned to reside in Pocatello in January 2011. He took a faculty position with the Idaho State University in the Family Practice Residency Department.
3. The mother was served the father's Complaint for Divorce on July 26, 2010. The mother filed for divorce in Latah County, Idaho on July 22, 2011. The father was served the mother's Complaint on August 1, 2010. With divorce actions pending in two counties, the parties stipulated to consolidate the cases in Bannock County.
Stipulation to Consolidate and Order to Consolidate, filed August 6, 2010.

4. The parties were married on November 19, 1993 in Ely, County of White Pine, Nevada. The natural child of the parties C.C. was born on [REDACTED] C.C. was born in Reno, Nevada just one month before the family relocated to Pocatello, Idaho in June 2007 for the father to begin his medical residency as a resident physician with the Idaho State University Family Practice Residency Department. C.C. resided in Pocatello for three years with the parties until they separated.
5. C.C. has resided primarily in Ely, Nevada with the mother and her parents since June 2010. He has visited and resided with the father a handful of times for extended visits since the separation.
6. The father filed his complaint seeking divorce alleging that property and debt should be divided equitably, that the parties should be awarded joint, shared legal and physical custody with specific parenting terms, and that the parties should share custody of the child on an equal time sharing basis in Idaho. He requested an award of attorney fees and costs pleading alternative statutory bases for an award. *Complaint for Divorce, filed July 19, 2010.*
7. The mother answered and counterclaimed for divorce, denying most of the allegations of the father's complaint and alleging that property and debt should be divided disproportionately with the father taking more of the community debt, that the parties should be awarded joint legal and physical custody of the child with specific parenting terms, and that she should be awarded primary residential custody of the child. She also seeks temporary spousal maintenance for a period of two years. She seeks an award of attorney fees and costs upon her

counterclaim, but failed to plead a statutory basis for an award of costs or attorney fees in her answer or her counterclaim. *Answer to Complaint, filed August 11, 2010; Verified Complaint for Divorce (Counterclaim by Stipulation, filed July 22, 2010 in Latah County.*

8. The father answered the counterclaim denying most of the mother's allegations. The father again sought costs and attorney fees in defense of the counterclaim pleading alternative statutory bases for an award. *Answer to Verified Complaint for Divorce (Counterclaim by Stipulation,) filed August 18, 2010.*
9. The mother has limited the father's access to the child and has made arranging visits between father and son more difficult than it should have been. She opines that the child suffers from separation anxiety and that he should not be away from her for visits as long as the father has had and proposed. *See, Plaintiff's Exhibits A, B, and U.* She and the maternal grandmother observed that C.C. takes some time to adjust after returning from his visits with his dad.
10. The father observed that C.C. seemed to enjoy his time with him and that he saw no behavioral or emotional problems in the child on arrival, while visiting, or on departure to return to the mother.
11. While residing with his mother and maternal grandparents in Ely, Nevada, C.C. has attended the Magic Carpet Preschool in Ely. He attended this preschool from late August or early September 2010 through May 2011. *Defendant's Exhibit 5.*
12. The mother is college educated having achieved a BS in English from Weber State University and a BS in English Education from Utah Valley State College with minors in Art at both institutions. She has also earned 10+ graduate credits

through University of San Diego and Sierra Nevada College. She has over six years of teaching experience in both Idaho and Nevada. She taught two years full-time at Pocatello High School. *See, Defendant's Exhibit 9.* The mother has certifications to teach in both Idaho and Nevada.-----

13. Since the separation, the mother had "motivational issues" for several months. She began to apply for jobs in October 2010. She began to substitute teach for the White Pine County School District in Ely, Nevada beginning at some time in the fall of 2010.
14. Since the separation, she has applied for full time teaching positions only in the state of Nevada. *Defendant's Exhibit 7.* She has received a job offer and intends to relocate from Ely to Reno, Nevada in order to teach in Reno. *Defendant's Exhibit 11.*
15. The mother has clearly asserted that it is her intention to remain a resident of Nevada where she was born and raised and where most of her family resides. She wants to move C.C. to the state of Nevada to reside with her primarily. At the time of trial, she had no idea where she would be living in Reno, or where C.C. would attend pre-school or daycare during the next school year, or where he would attend school in the fall of 2012.
16. The father intends to remain in Pocatello, Idaho. He has a fulltime faculty position at Idaho State University. He is purchasing the home that he has been renting in Pocatello since he returned from Moscow. The home is three blocks from Gate City School where C.C. would begin to attend school if he attends public school in the fall of 2012.

17. If the mother chooses to remain in Nevada, the father proposes that the parties share custody of C.C. on an equal basis, exchanging the child every three weeks, from the date of the decree until August 2012. When C.C. starts school in August 2012, he proposes that C.C. reside with him primarily in Pocatello, Idaho if the mother will not voluntarily relocate to Pocatello. If the mother will relocate to Pocatello, he proposes an equal shared custody arrangement where the child will reside with each parent equally. Custody of the child would rotate from the home to home on a weekly basis. The father even proposes to pay child support to the mother in excess of that required by the Idaho Child Support Guidelines in the event of an equal shared custody arrangement in Pocatello. The mother rejected that proposal at trial. *See, Plaintiff's Exhibit K.*

18. No informal or formal agreement was made concerning interim child support while the proceedings have been pending. No interim child support obligation was ordered or set. Upon her counterclaim, the mother seeks child support from the father retroactive to June 2010.

19. The father has paid child support directly to the mother as well as most all of the community debts and obligations of the parties since the parties' separated in June 2010. He sent the mother money and paid additional money towards other debts and obligations, which has helped support the mother and the child. His accounting of payments for child support shows that he paid \$9,850.00 specifically for child support directly to the mother. He also paid \$586.00 towards her travel expenses to attend a hearing in this case. He paid \$2,017.00 for the parties' federal and state income tax liabilities for 2010 and paid \$230.00 for

the preparation of their joint tax return. He has paid \$3,061.00 for the mother's health insurance; \$480.00 for her cell phone; \$5,490.00 in car payments and \$450.00 for car insurance for the vehicle the mother has had sole and exclusive use and possession of; \$616.00 towards the mother's student loan obligation; \$9,800.00 towards the closing costs for the loss on sale of the parties' home in Pocatello; \$16,000.00 to Bank of America on a line of credit; \$5,500.00 to pay off the parties' April trip to Hawaii; and \$1,800.00 on a credit card debt. In total, since June of 2010 the father has paid \$35,347.00 towards the parties' jointly held debts and liabilities. In total, he paid a total of \$20,633.00 directly to his wife and/or to support her and to continue to provide her with reliable transportation, a cell phone, health insurance, auto insurance, and even paid some of her student loan obligation. *See, Plaintiff's Exhibits E.* The father contends and believes that the mother and child have received ample support during the separation and that the mother has actually had several hundred dollars per month of discretionary income during the parties' separation. *Plaintiff's Exhibit D.*

20. During the separation, the mother testified that she had insufficient income to help with the parties' community debts and monthly bills. She shows a deposit of \$914.55 in her checking account at Greater Nevada Credit Union on November 22, 2010. Is this a paycheck for substitute teaching? She did not testify that it was and the court has no way to determine the source of these funds. She had a direct deposit of one paycheck in the sum of \$450.77 directly deposited to her checking account from the White Pine School District on January 21, 2011 which reflects income earned in 2010. All other deposits to her checking account

correspond to child support payments made by her husband or are for service charge reversals or dividends before 2011. The court did not receive complete documentation to show her actual gross or net income from June 2010 through July 2011.

21. The mother testified that she has paid \$350.00 per month for room and board and a storage unit to her parents from June 2010 through June 2011. Neither her mother, nor father testified as to the receipt of any room and board payments. However, her checking account statements show that she wrote checks for amount of \$350.00 to someone in the months of November 2010 through March of 2011. The court will accept the mother's testimony with respect to room and board and finds that the mother paid her parents \$350.00 per month for room and board and a storage unit while the action has been pending from July 2010 through June 2011.
22. Since the separation, the mother has paid \$120.00 per month for C.C.'s preschool totaling \$1,185.00.
23. In the month of April 2011, the mother paid for six (6) months of her car insurance. *See, Defendant's Exhibits 1 and 5.*
24. However, the court finds that the mother failed to testify about, or show what her actual earnings or gross income was during the separation. Her Direct Deposit Receipts from the White Pines County School District do not clearly show what, if any earning she had in the fall of 2010. Her Direct Deposit Receipts show she earned a gross income of \$4,798.40 in the first quarter of 2011 from January 1 through April 2, 2011. She was paid \$513.66 for work done in December 2010

on January 21, 2011. Her “pay cycle end date” on that receipt is 1/1/2011. *See, Defendant’s Exhibit 6.*

25. The court finds that the child was adequately supported during the separation and it is clear that the father provided more monetary support for C.C. than the mother did through her earnings during the separation. Throughout the separation, it appears that the mother supported herself and C.C. in large part by working only part-time, by living with her parents, and through receipt of the father’s child support payments. She had few bills because of the fact that the father was paying almost all of the parties’ community debts, obligations, and monthly expenses, including but not limited to her car payments, car insurance, health insurance, and her student loan. *See, Defendant’s Exhibit 5 and Plaintiff’s Exhibit D.*

26. A comparison of the father’s proposed monthly budget for the mother during the separation, which is based in large part on the mother’s affidavit with additional expenses added by the father to her budget, showed that the mother’s needs were being met. *Plaintiff’s Exhibit D.* Based on the mother’s proposed budget, which contains prospective expenses, and by looking to her checking account records, it appears that her needs and C.C.’s were met with the child support paid by the father, with her earnings, with her parents’ financial assistance which cannot be quantified, and with the father’s payment of the community debts and monthly obligations for himself and the mother. *Defendant’s Exhibit 1 and 5.*

27. The father seeks divorce on the grounds of irreconcilable differences. The mother also seeks a divorce on the grounds of irreconcilable differences. The parties’

marital relationship came to an abrupt end in June 2010. When faced with a move to Moscow, Idaho and the stress and strain of an emotionally and physically stagnant relationship, the father told the mother that he did not love her any more. Though she also filed for divorce, the mother has struggled with the idea of a divorce. *See, Plaintiff's Exhibits A and B, (e-mails and text messages between the parties) and Plaintiff's Exhibit N.* The father remains steadfast in his belief that the marital relationship cannot be reconciled. The court finds that irreconcilable differences preclude continuation of the marriage.

28. Child custody was the central issue in this trial. By stipulation and order, Linwood Vereen, Ph.D., LPC, was ordered to perform a custody evaluation for the parties. He was neither appointed as the court's expert, nor ordered to provide a report to the Court of his findings and recommendations. Dr. Vereen performed the custody evaluation and made a report for the parties in March of 2011. Dr. Vereen's report was based on interviews with both parents, separate parent-child observations of the child and both parents, home visits and discussions with collateral contacts provided by the parties. *Defendant's Exhibit 3.* Dr. Vereen testified at trial and his testimony was consistent with his report.
29. The parties did not stipulate that he could offer opinion testimony as an expert witness and for lack of foundation his opinions concerning recommendations for parenting time and the best interests of the child were not permitted into evidence. *Rule 702 Idaho Rules of Evidence.*
30. Dr. Vereen found that both parents are caring and attentive to C.C.. He testified that they are both effective parents who have demonstrated loving relationships

with C.C.. He considered the fact that the mother had been the primary care provider for the child while the father completed his medical school residency program. He also considered the distance between the parties' homes and felt that sharing custody was going to be challenging for both the parents and C.C. because of the distance between their homes.

31. The mother informed Dr. Vereen that she was considering a move to Reno, Nevada or Carson City, Nevada after the divorce. She told him she intended to take C.C. with her. Just prior to trial, the mother received a job offer to teach in a charter school in Reno, Nevada. She plans to accept the position and move to Reno.
32. C.C. has no extended family members living in the Pocatello or Chubbuck, Idaho area. He has an aunt, an uncle and a cousin in Reno, Nevada with whom he is acquainted. Most of the mother's family resides in Nevada, but many miles away from Reno. The father has arranged for child care in Pocatello with the child care provider C.C. has known for years and has a pre-school in mind for the child. The mother will rely on her family, and/or an unidentified daycare provider, and/or pre-school in Reno to care for C.C. while she works. Her plans for C.C. at the time of trial were not in place.
33. The father has friends and neighbors available to help if needed with C.C. in an emergency, or in his temporary absence. He plans to have C.C. enrolled in the Early Learning Center at Idaho State University for pre-school while he is working. He will have a flexible schedule and time available to attend to C.C.. The father receives the benefit of 48 paid leave days per year.

34. The mother's family, particularly the maternal grandparents had quite a bit of interaction with C.C. in spite of the distance between Ely and Pocatello even before the separation. C.C. knows Ely, Nevada and his maternal grandparents very well after residing there with them now for more than a year.
35. If the mother moves to Reno with C.C. she has fewer family members nearby to assist her with C.C.. In addition, C.C. has not had the opportunity to come to know these family members as well as those he knows his family in Ely, Nevada. The mother does not know where she will reside in Reno. C.C. has not spent time in Reno since he was about one month of age. His grandparents will be residing three hours away in Ely. It is unfortunate that the maternal grandfather is suffering from terminal cancer. The court has to wonder how often C.C. would be able to see his maternal grandparents over the next several months while he would be making the proposed adjustment to a new life in Reno.
36. In contrast, the father has a house and neighborhood for C.C. to live in in Pocatello that C.C. knows already. C.C. is also familiar with his neighbors and has some friendships in Pocatello.
37. C.C. has had his mother at home with him more frequently in Ely because she has not been employed fulltime. When he hasn't been with his mother he has been in preschool or with his grandparents. He does not have any particular neighborhood friendships in Ely. If the mother takes a job teaching, C.C. will be in a new town, in a new apartment or house, in a new preschool, without his grandparents, and with new people around him that he does not know very well. The mother whose presence he has been able to count on every day will be

working fulltime and away from him all day, most days for the first time that he will ever know or likely remember.

38. At trial, the mother testified that she was certain that she was going to move to Reno. However, she did not testify that she would move to Reno even if that meant leaving C.C. behind in Idaho with the father if the court decided that it is not in C.C.'s best interests to move from Idaho. She seemed to assume that C.C. would accompany her. Though she has a job offer and an opportunity to start a new life in Reno, the father is currently staying in the town that C.C. has known since birth.
39. The father has sacrificed financially to be able to spend time with his son and to be a part of his son's life. The father gave up a job in Moscow, Idaho to move closer to C.C.. He gave up a \$40,000.00 bonus to move to Moscow and take the position he had, \$30,000.00 of which he and the mother received and spent and which he must repay. He gave up student loan debt forgiveness that would have erased approximately \$223,000.00 in student loan debt over the next eight years. The Moscow position was in an underserved rural area and his position in Pocatello is not. He will not receive student loan debt forgiveness in Pocatello. He gave up an annual salary of \$225,000.00 to take a faculty position with Idaho State University for an annual salary of \$156,000.00.
40. The parties each have their own perspective as to why their relationship fell apart but the central causes were a growing lack of physical and emotional intimacy between them, and the loss of a marital partnership. They became distant from one another. Some of the testimony at trial tried to fix blame, but they are both to

blame. The mother struggled with depression and the father became absorbed in his education and future career as a physician. Communication on a meaningful level disappeared.

41. The father was the breadwinner and financial provider for the family even while attending school. It cannot be argued that the mother made unusual sacrifice, that she worked to put the father through medical school and deserves something in return. Together they both financially contributed to the marriage while he obtained his education. The financial history of this marriage does not reveal an arrangement wherein the father devoted himself to his studies while the mother provided the bulk of financial support to feed the family, to pay the bills and to facilitate his education. The father was not a fulltime student while the mother served as the breadwinner throughout his schooling. They each contributed to meeting the needs of their household over the course of their marriage. *Plaintiff's Exhibit F.*

42. The mother did not serve a traditional stay-at-home mom role after C.C.'s birth providing most of the daily care and nurturing for the child. Due to the mother's post-partum depression, the parties resorted to part-time daycare after five (5) months to give the mother a break. The mother worked fulltime for Pocatello-Chubbuck School District No. 25 during the 2008-2009 and 2009-2010 academic years. C.C. spent substantial time in work related child care in Pocatello.

43. The mother claims that the father removed himself from her life and C.C.'s life while he was finishing his residency. She says he was "never around". The

father claims he was interacting and bonding with C.C. when he was home and that he was not away from home and C.C. as much as the mother claims.

44. The father is described for lack of a better term, as a workaholic by the mother. Yet, without his dedication to work and his financial contribution to the marriage, they would have experienced greater financial difficulty, enjoyed a lesser standard of living as a family, and incurred more post-education debt. The mother has worked on and off and her greatest earnings and financial contributions to the marriage occurred while she was teaching in Reno while he attended medical school. Such is evidence of a typical marital partnership.
45. In terms of their credibility as witnesses, the father has a more believable account of the breakdown of the marriage and how the C.C. has been reared since birth. He testified that he was more involved in C.C.'s life and nurturing and caring for the child than the mother gives him credit for. He was complimentary of the mother's parenting abilities. He just wants to share time with C.C. with her. He wants to continue to be a part of C.C.'s life rather than excluded by distance and the mother's whims.
46. The mother was less believable in part because she contradicted herself. She said the marriage was a good marriage, then, she admitted a lack of intimacy or communication for the last several years of the marriage. She was confiding in friends about her unhappiness with her marriage. She called family members to testify about how abrupt, cold and distant her husband had become in the later years of the marriage. Yet, she asserted that she was blindsided by the father's request for a divorce. She minimized the father's role as both a parent and

provider and magnified what she perceived as her role as primary care giver and the woman who put her husband through medical school. The mother was not as complimentary of the father's parenting abilities.

47. The mother has not by action during the pendency of these proceedings, or by word through her testimony shown a desire to share time with C.C. with the father. In fact, the move to Reno evidences a desire to put greater distance between C.C. and his father and to create greater difficulty for the father to be a real part of C.C.'s life. The mother testified basically that she did it all with respect to raising, feeding, bathing, diapering, nurturing, and educating the child. According to her, the father was almost never around for her and C.C.. But, she also testified that the father is a good dad. Her inconsistent testimony is difficult to understand.
48. It was also revealed at trial that the mother suspects that the father has left her for another woman. She has gone so far as to hire a private detective to try to prove that point. The father denies any prior or current relationship with another woman beyond a friendship he has with a co-worker and the mother's evidence of his suspected infidelity does nothing to prove or confirm her suspicions. The private detective did not testify, so he or she must have little, if any information to share about what he or she has learned.
49. There is always a certain amount of posturing and presenting a person's best side at trial. The court had the opportunity to observe the demeanor of these parents throughout the trial, when they were testifying and when they were at counsel table. The father came across as genuine and honest about himself, about his

failings and his conduct in many respects. He is a good father trying to find a way to share time with his child with the mother. Dr. Vereen also saw positive things in his parenting of and relationship with C.C. and his desire to spend significant quality time with his son.

50. In general, the mother was the least credible witness of the parents. When the mother testified that she wanted to share custody of the child and access to the child with the father, she was not believable. The difficulties the father experienced and endured trying to see his son during the pendency of these proceedings is testimony to the mother's resistance to fostering a relationship between father and son. It is also a testimony to the father's commitment to be a parent to C.C.. He could have given up, but chose not to.

51. The mother is a nurturing parent to C.C. and a good mother except for her demonstrated unwillingness to include the father in C.C.'s life. Dr. Vereen saw positive things in her parenting of C.C.. But, it appears to this court that she seems too willing to claim custody of C.C. as if he were a possession, rather than consider ways to co-parent C.C. with the father after the divorce. The mother's actions and desire to move further away demonstrate either a conscious or unconscious willingness to diminish the relationship that C.C. has and can have with his father.

52. The mother must learn to accept that the father has an equally important role in C.C.'s life. The move to Reno is as much about control over the child as it is about an honest desire to live in Reno, Nevada, or to reside anywhere but Pocatello, Idaho.

53. The mother testified that she does not like living in Pocatello and that neither she nor the father planned to stay in Pocatello after his residency. The divorce has also changed the father's plans. He has sacrificed greatly to return to be in a place where he can have greater access to his son.
54. The father can and is providing health insurance for C.C.'s benefit through his employment.
55. Neither party will have much discretionary income following the divorce based upon the total sum of their debts and with the additional requirement of monthly child support payments, regardless of how the court divides their debts and regardless of who is paying or receiving child support.
56. The mother's actual gross annual income for the past twelve months cannot be determined with precision based upon the evidence. The mother has not been fulltime employed during the separation and has not really sought employment in earnest. She did not state what she had earned during the separation and she did not provide complete records of her earnings. The court can only speculate as to her actual income during the separation.
57. The mother has a college degree and is certified to teach in Idaho and Nevada. It is speculative at best, to assume that she could have found more substitute teaching work or other employment in Ely, Nevada. The mother offered little evidence about her efforts to find employment during the first few months of the separation. She applied for no work other than teaching work when she got around to looking for employment. The court finds that the mother has been voluntarily under-employed during the separation.

58. The father can be and has been a financial provider for this child. He paid support directly to the mother during the separation without a court order to do so and he paid the bulk of the parties' debts
59. The father's current gross annual income is \$156,000.00. The mother has found employment in Reno, Nevada and intends to accept the teaching position she has been offered. The gross annual income is a starting salary of \$31,332.00. She is challenging that salary offer to obtain a greater salary because of prior years of teaching experience.
60. The mother seeks retroactive child support and spousal maintenance, even though she was in fact under-employed, received \$9850.00 as child support, and paid only a small fraction of the parties' debts and monthly obligations. She failed to provide a precise income figure for herself with which to make any child support calculations. This court will not impute a fulltime minimum wage figure to her as requested in order to manufacture an interim child support figure for purposes of coming up with a fictional arrearage. The father fully supported both the child and the mother during this separation and the court finds that interim child support and spousal maintenance claims under the facts of this case are without merit and are not based in reality.
61. There was relatively little testimony or other evidence admitted addressing property and debt division, the character of the parties' property and debts, or the value of the parties' property. There was no testimony that any asset of the parties was the separate property of either party. The court finds that all of the parties' property is community property; that all of the parties' debt is community

debt; and that it is virtually impossible to make a precisely equal division of the parties' community property and community debt without causing post-divorce hardship upon the parties and their creditors. The mother's lack of sufficient income to service much of the parties' community debt is a serious impediment to an equal division of assets and debts. The parties have more debts than assets. Considering the financial circumstances of the parties, a fair and practical, though unequal division of the parties' community assets and community debts can be achieved.

62. The parties' pleadings and testimony evidenced basic agreement concerning property division. The following assets, for which no evidence of value was offered, are to be divided by the agreement that is revealed in the comparison of their pleadings:

To the Plaintiff	To the Defendant
2006 Chevy Silverado	2008 Toyota Highlander
Firearms (except .32 pistol)	.32 pistol
Power tools	Wife's jewelry & clothing
Lawn and garden tools	Art objects
Bed	Washer
Laptop computer	Dryer
Freezer	Couch
Husband's clothing & jewelry	Bed
Other property in his possession	Other property in her possession

63. The parties also agreed upon how to divide their community debts.

To the Plaintiff	To the Defendant
All debt he incurred after separation	All debt she incurred after separation
ICCU debt (\$25,000)	Wife's student loan (\$13,000)
Toyota Credit Services (\$27,000)	
Discover Card (\$2,000)	
Husband's student loan (\$240,000)	

Moscow Family Medicine and Gritman
Hospital bonus repayment (\$30,000)
ATT iPhone contract

64. A division of the parties' community property and community debt can be achieved by utilizing the parties' agreement because the father is in a better position to service the debt of the parties. This division of assets and debts is not a substantially equal division, but it is practical and takes into account the realities of the current employment status of each of the parties, their ability to service their debts, and their lack of significant assets.
65. The father does not have sufficient funds available with which to pay the spousal maintenance sought by the mother or to pay any of her costs and attorney fees due to the disproportionate division of the parties' property and debt. He also owes his attorney costs and attorney fees incurred in these proceedings.
- Plaintiff's Exhibits C and D, Defendant's Exhibit 1.*
66. The parties have offered no evidence of retirement or investment accounts to divide between them so the court finds that they have no such accounts.
67. The parties have disclosed no information about the balances in their savings or checking accounts and have not sought to divide the existing balances in their respective savings and checking accounts so the court finds that each should keep their respective bank accounts and whatever balances each of these accounts hold.
68. There were no claims made that community income was not accounted for. There were few foundational exhibits and no testimony offered in support of any potential claims for "unaccounted for" community income since the separation.

The court therefore finds that the parties' earnings during the separation were spent for community purposes.

69. The court finds as fact that the mother has sufficient property to provide for her reasonable needs and that she is able to support herself through employment.

LEGAL STANDARDS TO BE APPLIED

Divorces may be granted for a number of causes, including irreconcilable differences. *I.C. 32-603(8)*.

The children's welfare and best interest is of paramount importance in determining custody of children in a divorce action. *Hoskinson v. Hoskinson, 139 Idaho 448, 80 P.3d 1049 (2003)*. It has long been the law of the State of Idaho that the best interest of the children is the sole matter with which the court is concerned and their custody is of supreme importance regardless of the claims or the personal desires of the parents and even the wishes of the child must yield to the determination of what is best for the child's ultimate good. *Gustaves v. Gustaves, 138 Idaho 64, 57 P.3d 775, (2002)*; *Poesy v. Bunney, 98 Idaho 258, 561 P.2d 400 (1977)*; *Larkin v. Larkin, 85 Idaho 610, 382 P. 2d 784 (1963)*; *Tobler v. Tobler, 78 Idaho 218, 299 P.2d 490 (1956)*.

The legislature has provided by statute, a non-exhaustive list of factors for the trial court to consider when determining what is in the best interest of a child:

- (a) the wishes of the child's parent or parents as to his or her custody;
- (b) the wishes of the child as to his or her custodian;
- (c) the interaction and interrelationship of the child with his or her parent or parents, and his or her siblings;
- (d) the child's adjustment to his or her home, school, and community;
- (e) the character and circumstances of the individuals involved;
- (f) the need to promote continuity and stability in the life of the child; and
- (g) domestic violence as defined in section 39-6303, Idaho Code, whether or not in the presence of the child.

I.C. 32-717.

The trial court must avoid considering irrelevant factors, avoid assigning too much weight to any particular factor, and base its findings upon substantial and competent evidence. *Dymitro v. Dymitro*, 129 Idaho 527, 927 P. 2d 917 (App. 1996).

Custody is committed to the discretion of the trial court. *Roberts v. Roberts*, 138 Idaho 401, 64 P.3d 327 (2003).

Setting a visitation schedule rests in the discretion of the trial court. *Miller v. Mangus*, 126 Idaho 876, 893 P.2d 823 (App. 1985).

The preponderance of the evidence standard applies to custody and visitation determinations. *Hoskinson v. Hoskinson*, 139 Idaho 448, 80 P.3d 1049 (2003).

The court may select a custody schedule different than that proposed by either of the parties, *Milliron v. Milliron*, 116 Idaho 253, 255-56, 775 P.2d 145 (App. 1989), or from that recommended by an expert. *Levin v. Levin*, 122 Idaho 583, 586, 836 P.2d 529 (1992).

The court may consider bonding between the parents and the children. *Weiland v. Ruppel*, 139 Idaho 122, 124, 75 P.3d 176 (2003).

A custody order will not violate a parent's right to travel by restricting the move of a child out of state when the benefit the child would derive by staying near the parent who remains in Idaho outweighs the infringement on the moving parent's liberty. *Weiland v. Ruppel*, 139 Idaho 122, 125, 75 P.3d 176 (2003).

A parent has a fundamental liberty interest in maintaining a relationship with his or her child. *Doe v. Department of Health & Welfare*, 137 Idaho 758, 760, 58 P3d 341

(2002); *Troxell v. Granville*, 530 U.S. 57 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

It is appropriate for the court to consider the parents' work schedules and the need for third-party child care in a child custody determination, to the extent that such circumstances affect the well-being of the children. It can be one of many factors that assists the trial court in tailoring a custody order that best serves and promotes the welfare of the children. *Silva v. Silva*, 142 Idaho 900, 905-06, 136 P3d 371 (App. 2006).

There is a presumption that joint custody is not in the best interests of a minor child if one of the parents is found by the court to be a habitual perpetrator of domestic violence. *I.C. 32-717(B)(5)*.

In Idaho, the moving parent has the burden of proving relocation would be in the best interests of a child. *Roberts v. Roberts*, 138 Idaho 401, 405, 64 P.3d 327 (2003); *Albright v. Albright*, 147 Idaho 752, 755, 215 P. 3d 472 (2009).

Child support awards rest in the sound discretion of the trial court. *Margairez v. Siegal*, 137 Idaho 556, 558, 50 P.3d 1051 (App. 2002).

The Idaho Child Support Guidelines must be utilized to determine the appropriate amount of child support for minor children. *Rule 6(c)(6) IRCP*.

The assignment of the income tax exemption(s) to the parent who receives the greater tax benefit is required absent a finding that the circumstances justify a departure from the child support guidelines. *Idaho Child Support Guidelines, Section 3, Rule 6(c)(6)*; see also, *Silsbey v. Kepner*, 140 Idaho 410, 411-12, 95 P.3d 28 (2004).

The court must set child support with a deduction for the income tax exemptions for the children. The court may allocate the income tax exemption to the non-custodial

parent and direct the custodial spouse to execute a written waiver to that effect. *Rohr v. Rohr*, 118 Idaho 689,693-95, 800 P.2d 85 (1990).

If the needs or resources of the spouses are “likely to change” in the future, there is no logical reason to deprive the trial court of authority to prescribe a payment schedule containing future adjustments, and the court may set child support with an automatic future child support adjustment. *Keller v. Keller*, 130 Idaho 661, 664, 946 P.2d 623 (1997). The court can set child support increases, but must make findings as to the future needs of the children and the abilities of the parents to meet those needs. *Brazier v. Brazier*, 111 Idaho 692, 699-700, 726 P.2d 1143 (App. 1986).

It is proper for the court to set child support in accordance with a payor’s earning capacity when the payor is voluntarily under-employed. *Atkinson v. Atkinson*, 124 Idaho 23, 25, 855 P.2d 484 (App. 1993). Income may be imputed to a voluntarily under-employed parent based upon education and potential income as if employed fulltime. *Kornfield v. Kornfield*, 134 Idaho 383, 386, 3 P.3d 61 (App. 2000). However, full-time employment need not be attributed to a student. *Browning v. Browning*, 136 Idaho 691, 694, 39 P.3d 631 (2001). Potential income for child support purposes is not strictly limited to the amount a parent has earned in the past, but rather can be based upon earning potential as derived from their work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. *Ireland v. Ireland*, 123 Idaho 955, 958-59, 855 P.2d 40 (1993). The court need not limit income to the salary earned at the time of the hearing if the obligor is working for less than his potential income based on his work history, occupational qualifications, and prevailing job

opportunities, even if travel beyond his community is required. *Margairez v. Siegal*, 137 Idaho 556, 558-59, 50 P.3d 1051 (App. 2002).

The determination of value of community property is within the discretion of the trial court. *Chandler v. Chandler*, 136 Idaho 246, 249, 32 P.3d 140 (2001); *Hooker v. Hooker*, 95 Idaho 518, 522, 511 P.2d 800 (1973). _____

The determination of the characterization of property is within the discretion of the trial court. *Matter of Estate of Eliassen*, 105 Idaho 234, 238-37, 668 P.2d 110 (1983).

Earnings of the parties during separation and up to the date of divorce are community property. *Desfosses v. Desfosses*, 120 Idaho 354, 360-61, 815 P.2d 1094 (App. 1991); *Suter v. Suter*, 97 Idaho 461, 466-671, 546 P.2d 1169 (1976). The court must still review income and expenses incurred during the pretrial separation so there has been a proper accounting. *McAfee v. McAfee*, 132 Idaho 281, 292, 971 P.2d 734 (App. 1999).

Unless shown to the contrary, expenditures made on indebtedness incurred during the marriage are presumed to be for the benefit of the community. *Gardner v. Gardner*, 107 Idaho 660, 662, 691 P.2d 1275 (App. 1984). A debt incurred during the marriage is presumed to be a community debt. *Simplot v. Simplot*, 96 Idaho 239, 246, 526 P.2d 844 (1974). There is a rebuttable presumption that a debt incurred during the marriage is a community debt. *McAfee v. McAfee*, 132 Idaho 281, 291, 971 P.2d 734 (App. 1999).

Community property exists only as long as the community exists and it necessarily follows that the date of valuation of an asset is the date of entry of the decree of divorce. *McAfee v. McAfee*, 132 Idaho 281, 289, 971 P.2d 734 (App. 1999); *Desfosses v. Desfosses*, 120 Idaho 354, 358, 815 P.2d 1094 (App. 1992).

The trial court must find the value of each material asset and debt. Material means of a “sufficient amount to affect a substantially equal division”. *Donndelinger v. Donndelinger*, 107 Idaho 431, 435-36, 690 P.2d 366 (App. 1984).

Unless there are compelling reasons, there shall be a substantially equal division of value of community property considering debts between spouses. *I.C. 32-712*. When there is conflicting evidence regarding property division, it is the trial court’s task to evaluate the credibility of the witnesses and to weigh the evidence presented. *Huerta v. Huerta*, 127 Idaho 77, 79, 896 P.2d 985 (App. 1995). Each community asset need not be divided equally, as long as the value of the community property as a whole is substantially equal. *Ross v. Ross*, 117 Idaho 548, 554, 789 P.2d 1139 (1990). The trial court determines the extent and value of the community property and then deducts the total of the community debts to arrive at a net value of the community estate. The trial court then awards the property in such a manner as to divide that net value between the spouses. *McGrew v. McGrew*, 139 Idaho 551, 559, 82 P.3d 833 (2003).

Generally, community property will be divided in a substantially equal manner unless there are compelling reasons otherwise. *Maslen v. Maslen*, 121 Idaho 85, 88, 822 P.2d 982 (1991). Where one spouse is in a better position to pay the debts and maintain a positive cash flow following divorce, and the other spouse’s expenses will exceed his monthly income following the divorce, an unequal division of the marital estate is permitted. *Tisdale v. Tisdale*, 127 Idaho 331, 333, 900 P.2d 807 (App. 1995).

Upon dissolution of the community upon divorce, each spouse should have immediate control of his or her share of the community property, or at least within a

reasonable time. *Carr v. Carr*, 108 Idaho 684, 688, 701 P.2d 304 (App. 1985); *Ramsey v. Ramsey*, 96 Idaho 672, 679, 535 P.2d 53 (1975).

Spousal maintenance is a right created by statute and may be awarded when there is substantial competent evidence to support an award. The statute provides as follows:

1. Where a divorce is decreed, the court may grant a maintenance order if it finds that the spouse seeking maintenance:
 - (a) Lacks sufficient property to provide for his or her reasonable needs; and
 - (b) Is unable to support himself or herself through employment.
2. The maintenance order shall be in such amounts and for such periods of time that the court deems just, after considering all relevant factors which may include:
 - (a) The financial resources of the spouse seeking maintenance, including the marital property apportioned to said spouse, and said spouse's ability to meet his or her needs independently;
 - (b) The time necessary to acquire sufficient education and training to enable the spouse seeking maintenance to find employment;
 - (c) The duration of the marriage;
 - (d) The age and physical and emotional condition of the spouse seeking maintenance;
 - (e) The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance;
 - (f) The tax consequences to each spouse;
 - (g) The fault of either party.

I.C. 32-705.

Spousal maintenance is not awarded as a matter of right but only at the discretion of the trial court after a showing of need. *Ross v. Ross*, 103 Idaho 406, 648 P.2d 1119 (1982). The standard applied in awarding spousal maintenance is due consideration of the correlative needs and abilities of both parties. *Id.* at 411, 648 P.2d at __; *Stewart v. Stewart*, 143 Idaho 673, 152 P.3d 544 (2007). Maintenance is designed solely for the support of a dependent spouse after a showing of need. *Campbell v. Campbell*, 120 Idaho 394, 816 P.2d 350 (App. 1991). "The primary consideration in deciding the

appropriateness of an award of maintenance is the financial condition of the parties”.

Tisdale v. Tisdale, 127 Idaho 331, 900 P.2d 807 (App. 1991)

The trial court’s decision of whether to award attorney fees pursuant to I.C. 32-704 is discretionary. *Antill v. Antill*, 127 Idaho 954, 958, 908 P.2d 1261 (App. 1996); *McAfee v. McAfee*, 132 Idaho 281, 293, 971 P.2d 734 (App. 1989). Under I.C. 32-704(3), the financial resources of the parties must be considered then the factors under I.C. 32-705 must be applied and specific findings made on the issue of an award. *Antill v. Antill*, 127 Idaho 954, 958, 908 P.2d 1261 (App. 1996). An award under I.C. 32-704(3) is not dependent on who prevails. *Perez v. Perez*, 134 Idaho 555, 558, 6 P.3d 411 (App. 2000).

Parties who enter stipulations are bound thereby. *Ratliff v. Ratliff*, 129 Idaho 422, 425, 925 P.2d 1121 (1996).

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, applying the legal standards above, recognizing and exercising its discretion, the court enters the following conclusions of law:

1.

The court has continuing jurisdiction over the issues of child custody and child support, including enforcement of orders for support, for payment of medical expenses and for provision of health insurance for the benefit of the child during his minority. I.C. 32-706. The State of Idaho is the “home state” and was the place of residence of the child, the Plaintiff (the father) and the Defendant (the mother) at the time of the parties’ separation in June 2010. Both parties filed for divorce in Idaho within five (5) weeks of

their separation. The parties stipulated that Bannock County was the proper venue for this divorce action. The father later challenged venue and the court concluded then that venue was proper in Bannock County. Venue is proper and this court has jurisdiction under *I.C. 32-1103*, to enter a decree of divorce, an order dividing community property and debt, and a child custody and child support order in this matter.

2.

The parties are entitled to a divorce from one another. Both parties petitioned for divorce on the basis of irreconcilable differences. It is clear that their marital relationship is broken beyond repair. While it would appear that the parties were stipulating to the grounds for divorce, the mother and her counsel explored the “sudden” breakdown of the marital relationship and spent considerable time and effort trying to convince this court that the marriage was not so bad and that the father’s desire for a divorce was and still is beyond the mother’s comprehension. It is however clear after nearly four full days of trial that the parties’ differences are irreconcilable. The court concludes as a matter of law that the parties are entitled to a decree of divorce from one another on the grounds of irreconcilable differences.

3.

The parties are the parents of one minor child, C.C. Clair. *I.C. 32-717* grants the court the ability to “give such direction for the custody, care and education of the child of the parties as may seem necessary or proper in the best interests of the child.” Pursuant to the evidence, it is in the best interests of the minor child to remain in Idaho under a shared custody arrangement with both of his parents. The mother failed to prove by a

preponderance of the evidence that the proposed move for the child from Idaho to Reno, Nevada is in C.C.'s best interests.

There is a significant physical distance between the mother's proposed residence and the father's residence and distance is one factor the court considered when evaluating the move, whether it was her temporary move to Ely, Nevada, or her intended move to Reno, Nevada.

There was a joint prohibitive order entered in this case prohibiting either party from removing the child from Idaho without leave of the court. The mother did not seek this court's permission to remove the child from this state to Ely, Nevada. The father also did not seek to have her return the child to Idaho either.

The mother testified that she had no choice but to move home with her parents during the divorce. She blames the father for putting her in the position that she had to move home temporarily because she had resigned her teaching position. They had sold the home in Pocatello. The father was prepared moved to Moscow to start his new job. In addition, she testified that staying in Pocatello, Idaho was not part of the family's plan and that she did not like living in Pocatello and prefers to live in Nevada where she was born and raised and where most of her immediate family is located.

The father also did not plan to live in Pocatello, Idaho after completion of his medical residency. The father returned to Pocatello to reduce the distance between his home and the mother's home. Custody exchanges between Ely, Nevada and Moscow, Idaho proved difficult in part due to the distance. The father gave up a lot financially by returning to Pocatello to take another job in order to improve his access to and his ability to spend time with C.C..

This court must examine where C.C. should live, not where the mother or the father should live. Regardless of whose fault it may be for the separation, the divorce and the temporary living arrangement that followed separation, it is the court's obligation to decide where C.C. should live in the future.

C.C. has two good nurturing parents who love him and whom he loves. A permanent move to Nevada will likely damage the child's bond with his father if he is allowed to move with the mother. If the mother should move to Nevada without C.C., there is no doubt that her move will likely damage the child's bond with her. But, the court cannot prohibit a parent from moving out of state.

The court can only determine if it is in the best interest of the child to move with one parent, or remain in Idaho in cases such as these. The court concludes that it would serve this child's best interests to have both parents living in near-by communities which would allow C.C. frequent contact and the opportunity to maintain healthy bonds and relationships with both of his parents.

Since the mother stated a clear desire and intention to move to Reno, Nevada with the child, this court shall enter alternative orders. First, the mother did not prove by a preponderance of the evidence that it is C.C.'s best interests to move from Idaho with her. Therefore, if she moves, the court concludes and will order that C.C. will primarily remain in Pocatello, Idaho with the father and visit her in Nevada. Second, if the mother were to promptly return to Pocatello, the mother and father together proved by a preponderance of the evidence and the court concludes that a 65/35 shared custody arrangement between them will serve C.C.'s best interests. Third, if the mother were to return to Pocatello to reside after five months and before August 15, 2012, (the date of

the original decree of divorce), the court concludes that a slightly different shared custody arrangement that being an equal shared custody arrangement will serve C.C.'s best interests.

Since the mother is apparently choosing to work and to reside in Reno, Nevada, the court had to decide if C.C. would reside there with her primarily, or remain in Idaho in his father's primary care. The court concludes that shared custody is simply impractical when C.C. begins school in August 2012 if one parent is in Reno and the other in Pocatello.

The father proposes sharing custody on a three week rotating basis until C.C. starts school in August 2012. He proposes that C.C. begin residing with him primarily in Pocatello when the child starts school, if the mother will not return to Pocatello. The court concludes that it is not in C.C.'s best interests to travel such great distances so frequently.

These parents propose yet another major adjustment for this young child. There is also no good reason to delay the transition to the father's primary care for one more year before C.C. begins school. Why require C.C. to move a third time? He has moved to Ely. The mother would move him to Reno. The father would bring him back to Pocatello in a year. The mother and father would subject the child to frequent extended travel between Reno and Pocatello. Winter travel could be dangerous and problematic.

If it is in C.C.'s best interests to remain in Idaho in the father's care next year, it must be so this year. The court concludes that if the mother refuses to return to the Pocatello or Chubbuck, Idaho area, it is in C.C.'s best interests that he will reside primarily with the father in Idaho with provisions to promote access and regular visitation

with the mother in Nevada. In that event, C.C. will reside with father in Idaho for more than 75% of the overnights and a standard child support calculation will apply.

The mother could decide to return to Pocatello, Idaho when faced with reality of moving to Reno without C.C.. The mother has been the primary care giver for C.C. throughout his life and particularly during the past fourteen months. If she relocates to Pocatello, Idaho by January 15, 2012, the court concludes that upon the mother's arrival in Pocatello, it is in C.C.'s best interests that custody of the child should be shared by the parents on a 65/35 time sharing basis with the mother having sixty five percent (65%) of the overnight custody with the child and the father having thirty five percent (35%) of the overnight custody with the child.

If by January 15, 2011, the parents both are residing in Pocatello, Idaho, the court finds that it is in the best interests of the child to create and utilize a rotation of custody that involves nine (9) consecutive days with the mother followed by five (5) consecutive days with the father instead of a one week in, one week out rotation. The mother will continue to serve as the primary custodian. C.C. will not be bouncing back and forth between households and living out of suitcases and/or travel bags. Each parent's residence will be more like a home for him. For the reasons set forth herein in these findings of fact and conclusions of law, if the mother returns to Pocatello, Idaho, to reside before December 15, 2011, custody shall be shared on a 65/35% basis and in that event a shared custody child support calculation shall apply.

If the parents are to reside at a distance with the mother in Reno, Nevada and the father in Pocatello for the next four months, the child shall be returned to the primary care and custody of the father in Pocatello, Idaho. Until she makes her decision, the child

shall be returned to the care and custody of the father on Sunday, August 28, 2011, upon the father's arrival at the airport in Reno, Nevada at approximately noon. The child shall be delivered to the father by the mother within thirty (30) minutes of the father's arrival in Reno and the child shall travel back with the father to Pocatello.

The court concludes that custody of the child should be shared by the parents on a 50/50 equal timesharing basis with the father having fifty percent (50%) of the overnight custody with the child and the mother having fifty percent (50%) of the overnight custody with the child on a weekly rotation between the parents' homes if the mother returns to Pocatello between January 15, 2012 and August 15, 2012. If C.C. must spend in excess of five months in his father's primary care in Pocatello making the adjustments he will have to make in his mother's absence, it is unfair to C.C. to have to switch to a custody schedule that ignores the father's efforts to be the primary care giver and the routine that has been established for C.C. here in Pocatello. In the event of an equal shared custody arrangement in Pocatello, a shared custody child support calculation shall also be applied.

If the mother does not relocate to Pocatello within a year of the entry of the decree of divorce, it is unfair to C.C. to have any switch in the custody schedule that ignores the father's efforts to be the primary care giver and the routine that has been established for C.C. here in Pocatello absent a showing of a substantial, material change in circumstances. The mother may now have contractual obligations for employment and housing in Reno. Twelve months gives her time to decide if living in Reno is more important to her than being a regular presence in C.C.'s life in Pocatello. The court does not believe it is in C.C.'s best interests to leave the equal custody option open indefinitely or beyond a year because the longer she is apart from C.C., the more difficult the

transition will likely be for the child to an equal shared custody arrangement. The child's daily routines will be established and the continuity and stability of his life disrupted if the mother can return whenever she wants after a year and demand equal shared custody.

It is clear that the wishes of the parents differ. The father petitioned the court for equal shared custody of the child, or primary custody of the child in Idaho, if the mother moves out of Idaho permanently. The mother petitioned the court for primary custody of the child and for an order allowing her to take him with her to reside in Nevada.

The court concludes that the wishes of the parents are inconsistent, are not supported by the evidence and that their wishes and proposals do not promote the best interests of the child. The parents' wishes and proposals for custody do not really assist the court in determining the child's best interests other than the fact that the father is apparently willing to share custody with the mother if she remains in Idaho. Shared custody in Pocatello would be the best choice for C.C.. I.C. 32-717(1).

The court concludes that the child is too young for the court to consider his wishes. There was no substantial evidence that indicated what his wishes are. The court concludes as a matter of law that the wishes of the child do not assist the court in ruling on custody issues in this case. I.C. 32-717(2).

The interaction and interrelationship of the child with his parents favors shared custody in Idaho with mother continuing to provide the primary care for the child if she promptly returns to Pocatello within the next four months. This child has no siblings. Both parents are capable of sharing custody, though the mother seems less willing to do so. During the separation, the mother has not demonstrated the ability or willingness to share custody with the father from afar. Now she wants to move even further away. In

Idaho, the parents will have the opportunity to share custody in ways they could not during the separation because of the distance between them. But, until the mother returns, the father should begin to have primary care, custody and control of the child in Pocatello commencing August 28, 2011 because it was not proven that it is in C.C.'s best interests to remove him from Idaho.

Both parents have good, loving, nurturing relationships with their child that need to be fostered and maintained. C.C. does reasonably well in the care of both of his parents. The court concludes as a matter of law that the interaction of the child with his parents assists the court in ruling on custody and favors shared custody in Idaho with both parents. The child knows his father and his mother. The distance between the father and child created by the mother's move will not likely have a positive effect on C.C. or his relationship with his father which is one reason why the move is not in C.C.'s best interests. The preponderance of the evidence that addresses the interrelationship between the child and both parents favors shared custody here in Idaho. I.C. 32-717(3).

The child's adjustment to home, school and community also favors returning the child to Idaho under a shared custody arrangement. The mother removed the child to Ely, Nevada. He has resided there for a year and two months. The mother has been less than cooperative with time sharing and visitation between the father and C.C.. But, now the mother wants to uproot the child and move him to Reno, Nevada, a community he does not know.

C.C. resided most of his life in Pocatello, Idaho before the separation. Pocatello is where his father will continue to reside. Though he is only four years old, he knows Idaho as his home and Ely, Nevada as his home. He is not in school yet, but he has

attended preschool. He is exceptionally bright for his age. He has spent time in child care. He knows his child care providers in Pocatello and Ely. The mother would move him to Reno where he does not know his child care providers or his preschool.

C.C. does not have a lot of family or community ties in the Pocatello community because of his age. He is young and probably could adjust to a move to Reno, but only a move that involved both parents moving with him. C.C. knows his family members in Ely. He certainly has had the opportunity to come to know his maternal grandparents very well as he has resided with them since the separation began. But, now the mother wants to move him away to Reno.

C.C. is familiar with his father's new home in Pocatello and his adjustment to community will best be served by remaining in the father's care in Idaho if the mother chooses to move to Reno and not relocate to Pocatello. At his young age, C.C. can only know little about what community may have to offer him at this time in Reno. His mother will be working full time and he will be adjusting in the care of strangers and in the absence of his father and grandparents. Idaho provides a familiar environment and a familiar routine in child care. The court concludes as a matter of law that consideration of the child's ties to home, school and community that C.C. has stronger ties to Pocatello than Reno. I.C. 32-717(4).

The character and circumstances of the individuals involved gives the court some concern. The mother has demonstrated a tendency to withhold the child's access to the father. She is willing to take the child further away from the father and create not only distance between the child and the father, but distance between the child and the maternal grandparents. The mother is a good mother. She is caring and nurturing. She is willing

to provide financial, educational and emotional support for the child. She just does not want to share the child with the father.

The father is emotionally removed from the mother, but not from his child. He is thoughtful and patient when it comes to parenting the child. He is genuinely interested in making sure that the child has frequent access to both parents and in sharing custody and in providing financial, educational and emotional support for the child.

They are both good parents apart from one another and generally good parents can share custody of a child after divorce. The father is happier now that he and the mother have separated, but the mother is still hurt, angry and unwilling to let go of past issues. The court is not persuaded that the mother's emotional issues or her propensity to dwell on the past impacts her ability to care for C.C. at this time so long as she focuses on the child's emotional needs and not her own. If she cannot put this failed marriage behind her, it may seriously impact her ability to co-parent under a shared custody arrangement in the future. The court concludes as a matter of law that character and circumstances of the individuals involved leads the court to conclude that shared custody in Pocatello, Idaho, with the mother taking the role of primary caretaker under a 65/35% overnight custody rotation serves the best interests of the child. The other alternatives for custody are in C.C.'s best interests based upon the when and if the mother should decide to return or not return to Pocatello. I.C. 32-717(5).

The court next looks to the need to promote continuity and stability in the life of the child. This child should continue to do well under a shared custody arrangement with substantial access to both of his parents in the community he knows in Pocatello, Idaho. Uprooting C.C. and moving him again to Reno, Nevada does not promote continuity and

stability in his life. The court is most concerned about the child's ability to adjust to the proposed radical change that would accompany a move to Reno without the father and without his maternal grandparents' daily presence. If permitted to move with the child, the mother offers speculative possibilities of easy adjustments to a new community, with different family members, new relationships, in a new home, in a new neighborhood, in a new child care, in a new preschool, and with new friends, all far distant from the people and places he has known. Should the mother elect to move, the mother will be taking on the role of self-supporting single mom with no one else in the home to assist her for the first time in C.C.'s life. All things considered as to continuity and stability in the life of the child, the mother failed to prove by a preponderance of the evidence that a move to Reno, either by herself, or with C.C., would serve the child's best interests.

The court concludes as a matter of law that if the mother moves out of state, the child should reside primarily with the father in Pocatello, Idaho, with summer visitation in Reno and holiday visitation as will be set forth in Exhibit A hereto. The promise of adjustment and adaptation to a new home, in a new community, with new friends and family does not outweigh the reality that the child will be in a stable known environment in Pocatello, Idaho, a place C.C. knows as home. An order granting both parents joint legal and physical custody, with the child to reside primarily with the father in Pocatello, Idaho with parenting provisions as set forth in Exhibit A hereto promotes about as much continuity and stability in the child's life as one could hope for if the mother chooses to move and suddenly absent herself from his young life. C.C. will at least have one parent and a community he knows. I.C. 32-717(6).

There was no allegation of domestic violence between these parties. The presence of past domestic violence is a factor upon which the court cannot draw any conclusions in this case. Neither parent was or is a habitual perpetrator of domestic violence. I.C. 32-717(7).

The guidepost for custody decisions is the “**best interest of the child**”. The court has both discretion and statutory guidance. The standard of proof applied as to all factual issues was a preponderance of the evidence standard. The court turned to Idaho Code 32-717 for guidance. The court considered the evidence and all relevant factors in turn, and considered the case law and statutes stated above and exercised its discretion in reaching its conclusions.

4.

Neither party is currently paying child support under a court order. Pursuant to the evidence, the court concludes as a matter of law that only a prospective child support order should enter. A retroactive support order for child support and spousal maintenance was sought but it is clear from the evidence that the child and the mother were fully supported by the father during the pendency of these proceedings

Based upon an actual gross annual income figure of \$156,000.00 for the father and an actual gross annual income of \$31,312.00 for the mother as a full time teacher in Reno, with adjustment for health insurance premiums for the child to be paid by the father and assignment of the annual state and federal income tax deductions for the child to the father, a standard child support calculation with the C.C. residing primarily with the father yields a monthly child support obligation, payable from the mother to the father

in the monthly sum of \$244.00 payable from August 1, 2011 until further order of this court. See, Exhibit C attached.

The mother may choose to return to reside in Pocatello. She shall have thirty days to state her intentions in writing and provide them to the father. The child shall initially return to Pocatello, Idaho with the father on August 28, 2011. If the mother chooses to return to Pocatello within five months, based upon an actual gross annual income figure of \$156,000.00 for the father and a potential gross annual income of \$31,312.00 for the mother as a full time teacher in Idaho, with adjustment for health insurance premiums for the child to be paid by the father and assignment of the annual state and federal income tax deductions for the child to the father, a shared child support calculation with C.C. residing with the mother for 65% of the overnights and 35% of the overnights with the father, yields a monthly child support obligation, payable from the father to the mother in the monthly sum of \$1016.00 payable from the first day of the month that the mother establishes residence in Pocatello. See, Exhibit D attached.

The mother may choose to return and establish her residence in Pocatello between January 15, 2012 and August 15, 2012. She shall state her intentions to relocate to Pocatello in writing and provide them to the father. If the mother chooses to return to Pocatello after January 15, 2012 and before one year from the date of the original decree of divorce, based upon an actual gross annual income figure of \$156,000.00 for the father and a potential gross annual income of \$31,312.00 for the mother as a full time teacher in Idaho, with adjustment for health insurance premiums for the child to be paid by the father and assignment of the annual state and federal income tax deductions for the child to the father, a shared child support calculation with the C.C. residing with the mother for

50% of the overnights and 50% of the overnights with the father, yields a monthly child support obligation, payable from the father to the mother in the monthly sum of \$677.00 payable from the first day of the month that the mother establishes residence in Pocatello. See Exhibit E attached.

Monthly child support payments shall be made through Idaho Child Support Recepting, P.O. Box 70008, Boise, Idaho 83707, commencing August 16, 2011 consistent with this order.

If the mother moves to Reno and remains there, her monthly child support payments should be reduced each summer commencing in the year 2012 with one-half (1/2) abatement during the months she has the C.C. for periods in excess of fourteen (14) days.

5.

There was no testimony as to which of the parents would receive the greater tax benefit for having the ability to claim the dependency exemptions for the minor children on their income taxes. The parties both submitted proposed child support calculations that allowed the father to claim the dependency exemptions. The court concludes that based upon the implicit stipulation of the parties the father shall be entitled to claim the dependency exemptions for the child on his income tax returns. The mother shall have an ongoing obligation to execute any state or federal tax forms as may be required from year to year that may be necessary to permit the father to claim the dependency exemptions until further order of this court.

6.

The court concludes as a matter of law that a practical, fair, though not substantially equal division of the parties' community property and community debt is contained in Exhibit B attached hereto. There are compelling reasons to not divide the property and debt of this couple equally primarily because the mother has been under-employed and unable to pay much debt and because the father has the willingness and his financial ability to service the substantial debt owed by the parties. The father has agreed and will continue to pay for the debt to Toyota Credit Services, but if the mother sells, trades, or suffers a total loss of the 2008 Toyota Highlander she is awarded in the property division, the father will no longer be obligated for her future vehicle payments. The mother shall be required to provide auto insurance (gap coverage) sufficient to completely satisfy the interests of Toyota Credit Services in the event that the 2008 Toyota Highlander is ever damaged to the extent that it is determined a total loss.

7.

The court concludes that this is not a proper case for an award of temporary spousal maintenance. The mother has sufficient property and the ability to provide for her needs. The mother is educated, has a job, has almost seven years of experience in her profession, and has the ability to support herself. The mother is taking only her student loan debt of approximately \$13,000. The father is taking a disproportionate amount of the community debt. He is taking on in excess of \$320,000 of community debt. He is taking on a new mortgage for his home. He is even paying for the mother's motor vehicle. He owes attorney fees to his lawyer. If the mother returns to Pocatello, he will be paying child support. If she does not, he will not receive a significant amount of child

support. He will be paying the greatest share of work-related child care expenses and health care expenses that may be incurred for the benefit of the child. He clearly has little room in his budget with which to pay spousal maintenance.

8.

The court also concludes that neither party should pay the other's costs and attorney fees incurred and that each should bear their own legal fees and expenses. This case presented a difficult custody decision. Litigation and trial in this case arose from honest disagreement and difference of opinion about what is in the best interest of the minor child. Two good parents offer good homes for C.C. and it is unfortunate that distance, the mother's unwillingness to share custodial time, and the possible choice of the mother to move to another state put primary residential custody at issue for these parties and their child. The child will be best served if both parents remain in close proximity to one another in the same community in Idaho to share custody.

But, each parent has a right to travel and to live where they wish. The court does not and will not fault the mother for moving to improve her life, to increase her happiness by bringing her closer to her family, and to advance her career opportunities. By the same token, the right to move also must consider the reciprocal right to stay where one resides. The father has the equal right to pursue a budding career he has established here in Idaho. The mother's choice to propose a move with the child and the father's choice to remain in Idaho triggered the factual and legal analysis above which favors primary residential custody of this child with the father in Idaho and summer and holiday visitation with the mother in Reno, if she moves to Reno. The basis for the allowance of

any award of attorney fees is contained in I.C. 32-704 and the court concludes that each should pay for their own counsel.

9.

Since the mother is the one to move from Idaho and will precipitate transportation expense, the court concludes that she shall bear her own transportation costs to and from Idaho to see her child, the same as the father must do to see his child during the summer in Reno. If they choose to, or are required to accompany the child when they travel to and from Reno, the parents will pay their own transportation expense. Otherwise, the parties will equally share transportation expenses for the child, be it airfare or mileage reimbursed at the published government rate for mileage reimbursement for the state of Idaho. Any lodging expenses or meals shall be the responsibility of the transporting party. The parties may agree to exchange the child at a mid-point between Pocatello and Reno, but absent written agreement the party receiving the child for his or her custody time shall be responsible to pick up and transport the child from the residence of the party who is concluding his or her custody time with the child.

10.

The parties should be solely responsible to pay the debts assigned to them in this order and should indemnify and hold the other harmless for any future financial responsibility for the debts that each is ordered to pay.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED that:

1. The parties are entitled to a divorce from one another on the grounds of irreconcilable differences.

2. The parties shall have joint legal and physical custody of the child in accordance with the court's findings and conclusions above and with parenting provisions as set forth in Exhibit A attached hereto.
3. The parties' debts and assets will be divided in accordance with the court's findings and conclusions above and Exhibit B attached hereto.
4. If the mother moves to Reno a child support order shall be established requiring the mother to pay \$244.00 per month commencing August 15, 2011, as calculated in Exhibit C attached hereto.
5. If the mother returns to the Pocatello area by January 15, 2012, a child support order shall be established requiring the father to pay \$1016.00 per month commencing the first day of the month that the mother establishes residency in Pocatello, as calculated in Exhibit D attached hereto.
6. If the mother relocates to the Pocatello area after January 15, 2012 and before August 15, 2012, a child support order shall be established requiring the father to pay \$685.00 per month commencing the first day of the month that the mother establishes residency in Pocatello, as calculated in Exhibit E attached hereto.
7. The initial child support order shall be that which assumes the mother will remain in Reno. The child shall return to Pocatello with the father from Reno on August 28, 2011. During the next twelve months, the parties through counsel shall advise the court if the mother is going to choose to relocate to Idaho and exactly when she has established residence in the Pocatello area

after which the court will enter a supplemental order clarifying which of the alternative child support orders is in force.

8. Within ten (10) days counsel for both parties and the parties shall prepare and sign all deeds, documents, and titles required to transfer title to assets awarded the respective parties.
9. The parties shall each bear their own costs and attorney fees.
10. The court will issue a decree of divorce consistent herewith.

DATED this 9 day of November, 2011.


RICK CARNAROLI
SIXTH DISTRICT MAGISTRATE JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 10 day of November, 2011, a true copy of these Second Amended Findings of Fact and Conclusions of Law and Order was mailed postage pre-paid by U.S. mail to:

Frederick F. Belzer
Attorney at Law
P.O. Box 4947
Pocatello, ID 83205

Nick L. Nielson
Attorney at Law
P.O. Box 6159
Pocatello, ID 83205


Nichole Campbell, Deputy Clerk

EXHIBIT "A"

PROVISIONS FOR LEGAL AND PHYSICAL CUSTODY

The provisions for the legal and physical custody of the minor child of Charles Clair and Tracy Clair shall be as follows:

1. Legal and Physical Custody. The parents shall be awarded the joint legal and physical custody of their minor child 

IF THE MOTHER MOVES FROM THE POCATELLO AREA PERMANENTLY

The Pocatello area is defined as the geographic area that is 25 miles or less outside of the incorporated city limits of Pocatello, Idaho. A permanent move is failure to establish a residence in the Pocatello area on or before August 15, 2012.

In the event that the mother permanently moves from the Pocatello area, the parents shall alternate physical custody with the father having primary physical custody during the school term and a portion of the summer as set forth below and with the mother having primary physical custody of the child for a portion of the summer as set forth below. The physical custody arrangement shall be fixed based on the mother living in Reno, in a state other than Idaho, or in a community twenty-five (25) miles or more distant from Pocatello, Idaho, and the father living in Pocatello, Idaho, as follows:

- a. Holidays/Special Occasions. The parents shall alternate physical custody of the minor child for the following holidays and special occasions:

- (1). Thanksgiving Holiday. The parents shall alternate physical custody of the minor child for the Thanksgiving holiday, with the mother entitled to this holiday in odd-numbered

years and the father in even-numbered years. The period of physical custody for this holiday shall be from the Friday prior to Thanksgiving Day until the Friday that follows Thanksgiving Day.

(2). Christmas Holiday. The parents shall each be entitled to a portion of the child's Christmas holiday each year, with the father having the first portion in odd-numbered years and the mother in even-numbered years and with the father having the second portion in even-numbered years and the mother in odd-numbered years. The period of physical custody for the first portion of the Christmas vacation shall start on the day the child is released from school for Christmas vacation and continue until December 27. The period of physical custody for the second portion of the Christmas vacation shall be from December 27 and continue until the day prior to when the child is to return to school in Pocatello-Chubbuck School District No. 25.

(3). Spring Break. The mother shall be entitled to physical custody of the minor child during every Spring Break. The period of physical custody for the Spring Break shall start on the day children are released from school and continue until the Friday prior to the day children return to school in Pocatello-Chubbuck School District No. 25.

b. Summer Visitation. The parents shall share the child's summer. Summer shall be defined as the time that school is not in session according to the Pocatello-Chubbuck School District No. 25 Academic Calendar. The mother is entitled to nine (9) weeks of the summer commencing in 2012 and each summer thereafter and the father is entitled to the remainder of the summer. The mother's period of physical custody during the summer shall start on the day

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of her choosing, but shall be scheduled by her to end at least two weeks prior to the start of the school year according to the Pocatello-Chubbuck School District No. 25's Academic Calendar.

c. Unscheduled Visits. When a parent is visiting for a short period in the town where the parent with physical custody is residing, that parent shall be entitled to an unscheduled visit with the child for up to ten (10) hours selected by the visiting parent, conditioned on giving at least 72 hours advance written notice of the date and time of the visit.

d. Transportation. The parents shall share equally the cost and means of transportation to enable the exchange of physical custody, with the parents to agree in writing and select a midpoint to meet and exchange physical custody if they mutually agree that automobile transportation is used. If the parties do not agree in writing on a midpoint for a custody exchange, the party commencing his or her custody time shall be responsible to pick up the child at the residence of the party turning over custody of the child. If airline transportation is used upon mutual written agreement between the parties, the parents shall share equally the cost of the airline ticket, with the father to purchase the airline ticket and the mother to immediately reimburse the father for her share of the cost. If airline travel is to be utilized, the parents shall coordinate to purchase the airline tickets at the lowest possible cost. Absent written agreement, airline travel shall not be used.

IF MOTHER RETURNS TO POCATELLO BY 12/15/2011

Unless a different schedule is otherwise agreed to in writing signed by both parents, the following schedule shall be strictly followed and will be enforceable by contempt proceedings and by law enforcement. A return to Pocatello shall be defined as the mother's return to reside

permanently within twenty-five miles of Pocatello, Idaho. In that event, the parents shall share physical custody 65/35% overnight custody basis. The mother shall have overnight custody of the children on 65% of the overnights. The father shall have overnight custody on 35% of the overnights. The weekly schedule for the child shall be in two week blocks as follows:

	Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat.
Week 1	Dad	Dad	Mom	Mom	Mom	Mom	Mom
Week 2	Mom	Mom	Mom	Mom	Dad	Dad	Dad

The shared custody schedule set forth above shall commence on the Sunday following the date when the mother establishes permanent residence in the Pocatello area.

Beginning in 2012, every summer, the father shall be entitled to a single two (2) week period of uninterrupted vacation time with the child. Summer shall be defined as the time that school is not in session according to the Pocatello-Chubbuck School District No. 25 Academic Calendar. Every summer the mother shall also be entitled to a single two week period of uninterrupted vacation time with the child. On or before April 15, 2012 and in each year thereafter, the parents shall select their vacation weeks and communicate their selections to one another in writing. If by chance in any year there is a conflict in the proposed vacation dates for both parents, if the parents cannot agree to reschedule one vacation or another, the mother's choice takes precedence in even numbered years and the father's choice takes precedence in odd numbered years. The parents are not required to take the child on a vacation out of town. This vacation time can be spent at home, with family, or traveling with

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the parent entitled to the vacation time.

UNLESS OTHERWISE AGREED IN WRITING, ALL CUSTODY EXCHANGES SHALL TAKE PLACE PROMPTLY AT 6:00 P.M. ON THE DAY OF EXCHANGE. THE PARENT COMMENCING HIS OR HER CUSTODY PERIOD WITH THE CHILD SHALL BE RESPONSIBLE TO PICK THE CHILD UP AT THE HOME OF THE PARENT WHO IS ENDING HIS OR HER CUSTODY PERIOD WITH THE CHILD.

HOLIDAYS AND SPECIAL DAYS

Holiday and special day custody shall take precedence over the two week rotation days.

When full week periods of uninterrupted time with the child are taken for summer vacations, Thanksgiving, and Christmas, those one week or two week periods shall commence on the Sunday night immediately preceding the vacation or holiday, and at the end of the vacation or holiday, the two week rotation will pick up exactly where it left off prior to the beginning of any uninterrupted period for vacation, Thanksgiving, or Christmas.

Beginning in 2012 and in all even numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving. Beginning in 2012 and in all even numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas.

Beginning in 2011 and in all odd numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas. Beginning in 2011 and in all odd numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving.

Regardless of the two week rotation schedule, the child shall stay overnight with the mother on Mother's Day night and the mother's birthday. Regardless of the two week rotation schedule, the child shall stay overnight with the father on Father's Day night and the father's birthday. In even numbered years the child shall stay overnight with the father on his birthdays. In odd numbered years, the children shall stay overnight with the mother on his birthday.

IF MOTHER RETURNS TO POCATELLO BETWEEN 12/16/2011 AND 08/15/2012

Unless a different schedule is otherwise agreed to in a writing signed by both parents, the following schedule shall be strictly followed, will be enforceable by contempt proceedings and by law enforcement. A return to Pocatello shall be defined as the mother's return to reside permanently within twenty-five miles of the incorporated city limits of Pocatello, Idaho. In the event that the mother returns to Pocatello after four months and prior August 15, 2012, the parents shall share physical custody in Pocatello on an equal 50/50% overnight custody basis. The mother shall have overnight custody of the children on 50% of the overnights. The father shall have overnight custody on 50% of the overnights. The weekly schedule for the child shall be in two week blocks as follows:

	Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat.
Week 1	Mom	Mom	Mom	Mom	Mom	Mom	Mom
Week 2	Dad	Dad	Dad	Dad	Dad	Dad	Dad

The shared custody schedule set forth above shall commence on the Sunday following the date when the mother establishes permanent residence in the Pocatello area.

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Beginning in 2012, every summer, the father shall be entitled to a single two (2) week period of uninterrupted vacation time with the child. Summer shall be defined as the time that school is not in session according to the Pocatello Chubbuck-School District No. 25 Academic Calendar. Every summer the mother shall also be entitled to a single two week period of uninterrupted vacation time with the child. On or before April 15, 2012 and in each year thereafter, the parents shall select their vacation weeks and communicate their selections to one another in writing. If by chance in any year there is a conflict in the proposed vacation dates for both parents, if the parents cannot agree to reschedule one vacation or another, the mother's choice takes precedence in even numbered years and the father's choice takes precedence in odd numbered years. The parents are not required to take the child on a vacation out of town. This vacation time can be spent at home, with family, or traveling with the parent entitled to the vacation time.

UNLESS OTHERWISE AGREED IN WRITING, ALL CUSTODY EXCHANGES SHALL TAKE PLACE PROMPTLY AT 6:00 P.M. ON THE DAY OF EXCHANGE. THE PARENT COMMENCING HIS OR HER CUSTODY PERIOD WITH THE CHILD SHALL BE RESPONSIBLE TO PICK THE CHILD UP AT THE HOME OF THE PARENT WHO IS ENDING HIS OR HER CUSTODY PERIOD WITH THE CHILD.

HOLIDAYS AND SPECIAL DAYS

Holiday and special day custody shall take precedence over the two week rotation days. When full week periods of uninterrupted time with the child are taken for summer vacations, Thanksgiving, and Christmas, those one week or two week periods shall commence on the Sunday night immediately preceding the vacation or holiday, and at the end of the vacation or holiday, the two week rotation will pick up exactly where it left off prior to the beginning of

any uninterrupted period for vacation, Thanksgiving, or Christmas.

Beginning in 2012 and in all even numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving. Beginning in 2012 and in all even numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas.

Beginning in 2011 and in all odd numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas. Beginning in 2011 and in all odd numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving.

Regardless of the two week rotation schedule, the child shall stay overnight with the mother on Mother's Day night and the mother's birthday. Regardless of the two week rotation schedule, the child shall stay overnight with the father on Father's Day night and the father's birthday. In even numbered years the child shall stay overnight with the father on his birthdays. In odd numbered years, the child shall stay overnight with the mother on his birthday.

The child shall spend all other holidays not specified with the parent with whom he is regularly scheduled to be under any of the three custody schedules stated above.

2. Parenting Rules and Regulations. The rules shall apply whether the mother returns to the Pocatello, or whether she remains outside of the Pocatello area. While the parents have

[Type text]

physical custody of the minor child, the parents shall conduct themselves for the best interests of the child, to include the following provisions:

a. Direct Communication. The parents shall not use the child as a messenger, or make the child feel responsible for any misunderstandings which may arise between the parents.

b. Care. While the child is in the physical custody of a parent, that parent shall provide the child with: (a) regular and nutritious food, (b) clean and appropriate clothing, (c) sanitary and reasonably private living and sleeping quarters, and (d) appropriate medical examinations and treatment.

c. Supervision. While the child is in the physical custody of a parent, that parent shall: (a) train the child to obey and respect the children's teachers and the law, (b) require the child to attend all regular sessions of school until graduation, unless excused by medical reasons, the school, or the Court, and (c) personally supervise and control the conduct and activities of the child, except when the child is at school or in known or usual recreational activities, or in the immediate care of another competent, adult person.

d. Limitations. While the child is in the physical custody of a parent, that parent shall not engage in or permit in the presence of the child any excessive alcohol consumption; unlawful drug use; sexually explicit activities and/or permit any sexually explicit or suggestive photos, videos, movies or magazines to be left where a child may see them; and/or, violence or disrespect for law and order. That parent shall also ensure that the child does not engage in any objectionable activities, including, but not limited to, the use of alcohol and/or unlawful drugs.

e. Restraints. The parents, and any other persons under their direction and control, shall not do, attempt, or threaten any act to injure, maltreat, vilify, malign, defame, or molest the other parent, the child, or any person lawfully supervising the child; nor shall either parent attempt, or condone any attempt (directly or indirectly) by any artifice or subterfuge whatsoever, to estrange or alienate the minor child from the other party, or to injure or impair the child's mutual love and affection for the other parent.

f. Privacy. Neither parent shall intrude upon or invade the privacy of the other parent. Neither parent shall interfere with the lifestyle differences which may exist in the other's home, unless such lifestyle difference is later found by the court to be harmful to the child.

g. Love and Affection. Each parent shall exert every effort to maintain free access and unhampered contact between the child and the other parent, and shall foster love and affection between the child and the other parent. Neither parent shall do anything, nor permit any other person residing in the household to do anything, which would estrange the child from the other parent, or that would distort the child's opinion of the other, or would impair the child's love and respect for the other parent.

h. Telephone Calls and Electronic Communication. Each parent shall be entitled to telephone and electronic communication with the child at reasonable times, frequency and duration, and the other parent shall respect the child's right to privacy during such conversations. Telephonic communication includes, but is not limited to phone calls and text messaging. Electronic communication includes but is not limited to internet

[Type text]

communication through e-mail, social media such as Facebook, and audio/visual communication such as Skype.

i. Mail. Each parent shall be entitled to correspond with the child through the mail, by text message, or through the internet and the other parent shall not read, censor, or otherwise interfere with such correspondence unless such communication is later found to be harmful by the court.

j. Interference. If the child is invited or desires to participate in any activity which may interfere with one parent's rights, the other parent shall not encourage, permit or consent to such activities without prior approval of the parent entitled to physical custody of the child during that time, and, shall not belittle the parent's denial of such approval.

k. Activities. While the child is in a parent's physical custody, that parent shall be entitled to take the child to any reasonable place and participate in any reasonable activity.

l. Readiness. The child shall be ready and promptly available for all custody exchanges. Each child shall be sent with sufficient clothing which is appropriate for ordinary activities; and, if advised in advance, with special or additional clothing when it is appropriate for any special activities. However, neither parent shall be obligated to purchase new clothing solely to comply with this provision.

m. Consultations. The parents shall confer as frequently as necessary by telephone, text, e-mail, internet, or mail to inform the other about the needs, activities, discipline, welfare, education, health, religious upbringing, and development of the child.

The objective is, so far as possible, to adopt a mutually harmonious policy for the child's upbringing and the parents shall discuss these matters with a goal of shared decision making. If there is disagreement over any of these issues and the parents cannot resolve those differences, then disputes shall be submitted to a mediator for resolution before legal action is taken.

n. Records. Upon request, the parents shall provide each other with the child's educational, health or other records, but the parent requesting copies shall be responsible for the costs of copies. Both parents shall be responsible for keeping the other parent advised of all major school, social, athletic, and religious events in which the child participates and of which the other parent may not be aware.

o. Selections. Except in emergency situations, all schools, health care providers, and counselors shall be selected by the parents jointly. If there is disagreement over any of these issues and the parents cannot resolve those differences, then disputes shall be submitted to a mediator for resolution before legal action is taken.

p. Emergencies. Each parent shall be empowered to obtain emergency health care for a child without the consent of the other parent. However, each parent shall promptly notify the other, as soon as possible, if an emergency illness or injury requires a physician's care.

q. Non-emergency Medical/Health Care. Each party shall notify the other parent as soon as possible if a non-emergency illness or injury requires the care of a physician or other health care provider. All non-emergency matters for surgery, medical, dental, orthodontic, optical or other health care shall be discussed and resolved before treatment

[Type text]

is commenced and the children shall be treated for all non-emergency medical, dental, orthodontic or optical matters by a medical provider mutually acceptable to both parties. Both parents shall make reasonable efforts to keep the other parent informed of the child's medical condition while in their physical custody. If the parents cannot agree on the nature or extent of medical or other health care and/or shall the parents not agree on the person to provide such care, then the parents shall pursue resolution through a mediator before legal action is taken.

r. Name. The child shall continue to be known legally and publicly by the father's surname. The child shall not, for any purpose or reason, use or assume the name of any subsequent spouse of either parent, or any other surname.

s. Address and Telephone. Each parent shall provide the other with the child's address and telephone number while in that parent's physical custody and/or during periods of custody, visitation, or vacations. Reasonable advance notice shall be provided for any anticipated travel and itineraries shall be provided upon request.

t. Notice of Intended Move. If either parent plans on permanently moving their principal place of residence a distance of more than twenty five (25) miles from that where they are presently residing, they shall be required give prior notice to the other parent so that the court can be asked to determine appropriate provisions for future physical custody based on that intended move, if any are needed. Notice shall be required to be given not less than sixty (60) days in advance of any intended permanent move, if known; or, if an intended permanent move does not allow the giving of sixty (60) days prior notice, then at a minimum notice shall be given within twenty-four (24)

hours of the time the parent determines that a permanent move is necessary. The written notice shall contain: (a) the new intended address; (b) the mailing address, if not the same; (c) the telephone number, if known; (d) the date of the intended move; (e) specific reasons for the move; and (g) a proposed custody and visitation schedule, if changes are required from the provisions set forth above. The child shall not be moved to a new residence that precludes continuation of the custody arrangement set forth above unless and until the court enters an order allowing that move.

[Type text]

EXHIBIT B

ASSETS

To the Plaintiff

2006 Chevy Silverado
Firearms (except .32 pistol)
Power tools
Lawn and garden tools
Bed
Laptop computer
Freezer
Husband's clothing & jewelry
Other property in his possession

To the Defendant

2008 Toyota Highlander
.32 pistol
Wife's jewelry & clothing
Art objects
Washer
Dryer
Couch
Bed
Other property in her possession

DEBTS

To the Plaintiff

All debt he incurred after
separation
ICCU debt (\$25,000)
Toyota Credit Services (\$27,000)
Discover Card (\$2,000)
Husband's student loan (\$240,000)
Moscow Family Medicine and Gritman
Hospital bonus repayment (\$30,000)
ATT iPhone contract

To the Defendant

All debt she incurred after
separation
Wife's student loan (\$13,000)

Case Summary

Case #: CV-2010-2989-DR

Parent Information:

	<u>Father</u>	<u>Mother</u>
Name:	Charles M. Clair, Jr.	Tracy J Clair
Marital Status:	Single	Single
Party Association:	Plaintiff	Defendant
Attorney's Name:		
Attorney's Phone:		
ICSG Income:	156,000.00	31,312.00
ICSG Percentage:	83.3%	16.7%

Children Information:

Child's Name	Birthdate	% with Father	Tax Exemption	Calc Support Until
Colten Clair	████████	75	Father	18th Birthday

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	0.00	236.34
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
Total of each parent's obligations	0.00	243.86

The recommended basic support the Mother should pay is 236.34 per month (before other costs to be considered by the court).

The recommended adjusted support the Mother should pay is 243.86 per month (other costs considered by the court included).

EXHIBIT

C

452

From the offices of: Bannock County Court Assistance Office

**In the District Court of the Sixth Judicial District
of the State of Idaho, In and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

VS
Tracy J Clair

Defendant,

Affidavit Verifying Income

I hereby state under oath that the following information is true.

A. GROSS INCOME

	Father	Mother
1. Wages, salary, commissions, bonuses, etc.	\$156,000.00	\$31,312.00
2. Rent, royalties, trade, or business income, etc.		
3. Interest, dividends, pensions, annuities, etc.		
4. Social sec., worker's comp, unemployment, disability, veteran ben., etc.		
5. Public Assistance, welfare for.....__ Self __ Children		
6. Alimony		
7. Grants, distributions from trusts, etc.		
8. Other		
9. SUBTOTAL	\$156,000.00	\$31,312.00

B. DEDUCTIONS FROM GROSS INCOME

1. Straight line depreciation on assets
2. One-half of self-employment Social Security taxes
3. Child support + alimony from another relationship
4. Support for child of another relationship living in the home
5. Deduction for spousal maintenance in this case
6. Non Court Ordered Deductions

7. DEDUCTIONS SUBTOTAL

C. GROSS INCOME AS ADJUSTED

\$156,000.00 \$31,312.00

D. IN-KIND BENEFITS (I.C.S.G. Section 6(b))

E. POTENTIAL INCOME (I.C.S.G. Section 6(e))

F. GUIDELINES INCOME (C + D + E)

\$156,000.00 \$31,312.00

G. MONTHLY ICSG INCOME (F / 12 months)

\$13,000.00 \$2,609.33

Signature of Party Submitting

Subscribed and sworn to before me on

From the offices of: Bannock County Court Assistance Office

**In the District Court of the Sixth Judicial District
of the State of Idaho, In and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

**Adjustments to Child Support
and Recap of Obligations**

Total ICSG Income:	\$187,312.00	Father's Share	83.3	\$156,000.00	Single
		Mother's Share	16.7	\$31,312.00	Single

Tax Exemption Adjustment

Child's Name	Claimed by	Exemption Amt	Father's Share	Mother's Share
Colten Clair	Father			

**Parent is entitled to:
While parent is getting:**

Nothing is owed by either parent for taxes.

Health Insurance Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father	\$540.00	83%	\$449.73	\$540.00	-\$90.27
Mother	\$540.00	17%	\$90.27		\$90.27

Mother owes \$90.27 per year, \$7.52 per month for health insurance.

Work Related Daycare Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for work related daycare.

Travel Expenses Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for travel expenses.

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	0.00	236.34
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
	-----	-----
Total of each parent's obligations		\$243.86

The recommended basic support the Mother should pay is \$236.34 per month (before other costs to be considered by the court).

The recommended adjusted support the Mother should pay is \$243.86 per month (other costs considered by the court included).

Prepared By _____ Date _____

**In the District Court of the Sixth Judicial District
of the State of Idaho, In and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

**Standard Custody
Child Support Worksheet**

CHILDREN	BIRTHDATE	CUSTODY	CHILDREN	BIRTHDATE	CUSTODY
1. Cotten Clair	5/7/2007	Joint	2.		
3.			4.		
5.			6.		
7.			8.		

	Plaintiff	Defendant	Combined
1. Monthly I.C.S.G. Income (from Affidavit)	\$13,000.00	\$2,809.33	\$15,809.33
2. Percentage Share of Income (Each Parent)	83%	17%	
3. Child Support Obligation			\$1,413.80
4. Each Parents Child Support Obligation	\$1,177.48	\$236.34	
5. Recommended Child Support Order for non-custodial parent	\$236.34		

Other Costs to be Considered by the Court

- a. Work-Related Child Care Costs
- b. Health Insurance premium and uninsured health care expenses \$7.52
- c. Disability or Retirement dependent benefits
- d. Tax benefit for dependency exemptions
- e. Travel Expenses

Comments, Calculations, or Rebuttals

Prepared By _____ Date _____

From the offices of: Bannock County Court Assistance Office

**In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

Continued Support Worksheet

As of 5/7/2025 when Colten Clair turns 18, no children will remain in the home.

Case Summary

Case #: CV-2010-2989-DR

Parent Information:

	<u>Father</u>	<u>Mother</u>
Name:	Charles M. Clair, Jr.	Tracy J Clair
Marital Status:	Single	Single
Party Association:	Plaintiff	Defendant
Attorney's Name:		
Attorney's Phone:		
ICSG Income:	156,000.00	31,312.00
ICSG Percentage:	83.3%	16.7%

Children Information:

Child's Name	Birthdate	% with Father	Tax Exemption	Calc Support Until
[REDACTED]	[REDACTED]	35	Father	18th Birthday

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	1,023.95	0.00
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
	-----	-----
Total of each parent's obligations	1,023.95	7.52

The recommended basic support the Father should pay is 1,023.95 per month (before other costs to be considered by the court).

The recommended adjusted support the Father should pay is 1,016.43 per month (other costs considered by the court included).

EXHIBIT

D

458

From the offices of: Bannock County Court Assistance Office

In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

Affidavit Verifying Income

I hereby state under oath that the following information is true.

A. GROSS INCOME

1. Wages, salary, commissions, bonuses, etc.
2. Rent, royalties, trade, or business income, etc.
3. Interest, dividends, pensions, annuities, etc.
4. Social sec., worker's comp, unemployment, disability, veteran ben., etc.
5. Public Assistance, welfare for.....__ Self __ Children
6. Alimony
7. Grants, distributions from trusts, etc.
8. Other

Father	Mother
\$156,000.00	\$31,312.00

9. SUBTOTAL

\$156,000.00	\$31,312.00
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B. DEDUCTIONS FROM GROSS INCOME

1. Straight line depreciation on assets
2. One-half of self-employment Social Security taxes
3. Child support + alimony from another relationship
4. Support for child of another relationship living in the home
5. Deduction for spousal maintenance in this case
6. Non Court Ordered Deductions

7. DEDUCTIONS SUBTOTAL

C. GROSS INCOME AS ADJUSTED

\$156,000.00	\$31,312.00
--------------	-------------

D. IN-KIND BENEFITS (I.C.S.G. Section 6(b))

E. POTENTIAL INCOME (I.C.S.G. Section 6(e))

F. GUIDELINES INCOME (C + D + E)

\$156,000.00	\$31,312.00
--------------	-------------

G. MONTHLY ICSG INCOME (F / 12 months)

\$13,000.00	\$2,609.33
-------------	------------

Signature of Party Submitting _____

Subscribed and sworn to before me on _____

Income Affidavit - Page 1 of 1

From the offices of: Bannock County Court Assistance Office

**In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

**Adjustments to Child Support
and Recap of Obligations**

Total ICSG Income:	\$187,312.00	Father's Share	83.3	\$156,000.00	Single
		Mother's Share	16.7	\$31,312.00	Single

Tax Exemption Adjustment

Child's Name	Claimed by	Exemption Amt	Father's Share	Mother's Share
Colten Clair	Father			

**Parent is entitled to:
While parent is getting:**

Nothing is owed by either parent for taxes.

Health Insurance Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father	\$540.00	83%	\$449.73	\$540.00	\$-90.27
Mother	\$540.00	17%	\$90.27		\$90.27

Mother owes \$90.27 per year, \$7.52 per month for health insurance.

Work Related Daycare Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for work related daycare.

Travel Expenses Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for travel expenses.

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	1,023.95	0.00
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
	-----	-----
Total of each parent's obligations	\$1,023.95	\$7.52

The recommended basic support the Father should pay is \$1,023.95 per month (before other costs to be considered by the court).

The recommended adjusted support the Father should pay is \$1,016.43 per month (other costs considered by the court included).

Prepared By _____ Date _____

Page 1 of 1

**In the District Court of the Sixth Judicial District
of the State of Idaho, In and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

**Shared, Split or Mixed Custody
WorkSheet**

CHILDREN	BIRTHDATE	CHILDREN	BIRTHDATE	CHILDREN	BIRTHDATE		
1. [REDACTED]	[REDACTED]	2.		3.			
4.		5.		6.			
7.		8.		9.			
10.		11.		12.			
				MOM	DAD	COMBINED	
1. Monthly ICSG Income (from Alldevit)				\$2,609.33	\$13,000.00	\$15,609.33	
2. Share of Income for Each Parent <small>(line 1 for each parent divided by Combined Income)</small>				16.7	83.3		
3. Combined Child Support Obligation <small>(apply line 1 Combined to Child Support Schedule)</small>						\$1,413.80	
4. Each Parents Child Support Obligation <small>(line 2 multiplied by line 3 for each parent)</small>				\$236.34	\$1,177.46		
5. Obligation Allocation <small>(line 4 divided by the number of children)</small>				\$236.34	\$1,177.46		
		6. Allocation to Child <small>For each standard-custody child enter the amount from line 5. For each shared or split-custody child multiply line 6 by 1.5.</small>		7. Proportional Obligation <small>Number of overnights with other parent divided by 365. If greater or equal to 78%, enter 1. If less than or equal to 22%, enter 0.</small>		8. Parents Obligation <small>Line 6 times line 7 for each child.</small>	
		Mom	Dad	Mom	Dad	Mom	Dad
Colten Clair		\$354.51	\$1,766.19	35%	65%	\$124.08	\$1,148.03
9. EACH PARENT'S TOTAL SUPPORT <small>(total from all boxes)</small>					MOM	DAD	
					\$124.08	\$1,148.03	
10. RECOMMENDED SUPPORT <small>(subtract lesser of line 9 from greater and enter it under parent with greater obligation)</small>						\$1,023.95	
Other Costs to be Considered by the Court							
a. Work-Related Child Care Costs							
b. Health insurance premium and uninsured health care expenses							
\$-7.52							
c. Disability or Retirement dependent benefits							
d. Tax benefit for dependency exemptions							
e. Travel Expenses							
Prepared By _____					Date _____		

From the offices of: Bannock County Court Assistance Office

**In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

Continued Support Worksheet

As of 5/7/2025 when Colten Clair turns 18, no children will remain in the home.

Case Summary

Case #: CV-2010-2989-DR

Parent Information:

	<u>Father</u>	<u>Mother</u>
Name:	Charles M. Clair, Jr.	Tracy J Clair
Marital Status:	Single	Single
Party Association:	Plaintiff	Defendant
Attorney's Name:		
Attorney's Phone:		
ICSG Income:	158,000.00	31,312.00
ICSG Percentage:	83.3%	16.7%

Children Information:

<u>Child's Name</u>	<u>Birthdate</u>	<u>% with Father</u>	<u>Tax Exemption</u>	<u>Calc Support Until</u>
Colten Clair	██████████	50.1	Father	18th Birthday

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	684.64	0.00
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
Total of each parent's obligations	684.64	7.52

The recommended basic support the Father should pay is 684.64 per month (before other costs to be considered by the court).

The recommended adjusted support the Father should pay is 677.11 per month (other costs considered by the court included).

EXHIBIT

E

464

From the offices of: Bannock County Court Assistance Office

In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock

Charles M. Clair, Jr.

Plaintiff,

vs

Tracy J Clair

Defendant,

Case No. CV-2010-2989-DR

Affidavit Verifying Income

I hereby state under oath that the following information is true.

A. GROSS INCOME

1. Wages, salary, commissions, bonuses, etc.
2. Rent, royalties, trade, or business income, etc.
3. Interest, dividends, pensions, annuities, etc.
4. Social sec., worker's comp, unemployment, disability, veteran ben., etc.
5. Public Assistance, welfare for.....__ Self __ Children
6. Alimony
7. Grants, distributions from trusts, etc.
8. Other

	Father	Mother
1. Wages, salary, commissions, bonuses, etc.	\$156,000.00	\$31,312.00

9. SUBTOTAL

9. SUBTOTAL	\$156,000.00	\$31,312.00
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B. DEDUCTIONS FROM GROSS INCOME

1. Straight line depreciation on assets
2. One-half of self-employment Social Security taxes
3. Child support + alimony from another relationship
4. Support for child of another relationship living in the home
5. Deduction for spousal maintenance in this case
6. Non Court Ordered Deductions

7. DEDUCTIONS SUBTOTAL

C. GROSS INCOME AS ADJUSTED

C. GROSS INCOME AS ADJUSTED	\$156,000.00	\$31,312.00
-----------------------------	--------------	-------------

D. IN-KIND BENEFITS (I.C.S.G. Section 6(b))

E. POTENTIAL INCOME (I.C.S.G. Section 6(c))

F. GUIDELINES INCOME (C + D + E)

F. GUIDELINES INCOME (C + D + E)	\$156,000.00	\$31,312.00
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G. MONTHLY ICSG INCOME (F / 12 months)

G. MONTHLY ICSG INCOME (F / 12 months)	\$13,000.00	\$2,609.33
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Signature of Party Submitting

Subscribed and sworn to before me on

Income Affidavit - Page 1 of 1

From the offices of: Bannock County Court Assistance Office

In the District Court of the Sixth Judicial District
of the State of Idaho, In and for the County of Bannock

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

Adjustments to Child Support
and Recap of Obligations

Total ICSG Income:	\$187,312.00	Father's Share	83.3	\$156,000.00	Single
		Mother's Share	16.7	\$31,312.00	Single

Tax Exemption Adjustment

Child's Name	Claimed by	Exemption Amt	Father's Share	Mother's Share
Colten Clair	Father			

Parent is entitled to:
While parent is getting:

Nothing is owed by either parent for taxes.

Health Insurance Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father	\$540.00	83%	\$449.73	\$540.00	\$-90.27
Mother	\$540.00	17%	\$90.27		\$90.27

Mother owes \$90.27 per year, \$7.52 per month for health insurance.

Work Related Daycare Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for work related daycare.

Travel Expenses Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for travel expenses.

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	684.64	0.00
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
	-----	-----
Total of each parent's obligations	\$684.64	\$7.52

The recommended basic support the Father should pay is \$684.64 per month (before other costs to be considered by the court).

The recommended adjusted support the Father should pay is \$677.11 per month (other costs considered by the court included).

Prepared By _____ Date _____

**In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

**Shared, Split or Mixed Custody
WorkSheet**

CHILDREN	BIRTHDATE	CHILDREN	BIRTHDATE	CHILDREN	BIRTHDATE
1. Colten Clair	5/7/2007	2.		3.	
4.		5.		6.	
7.		8.		9.	
10.		11.		12.	
		MOM		DAD	
1. Monthly ICSG Income (from Affidavit)		\$2,809.33		\$13,000.00	
2. Share of Income for Each Parent (line 1 for each parent divided by Combined Income)		16.7		83.3	
3. Combined Child Support Obligation (apply line 1 Combined to Child Support Schedule)				\$1,413.80	
4. Each Parents Child Support Obligation (line 2 multiplied by line 3 for each parent)		\$238.34		\$1,177.48	
5. Obligation Allocation (line 4 divided by the number of children)		\$238.34		\$1,177.48	
6. Allocation to Child For each standard-custody child enter the amount from line 5. For each shared or split-custody child multiply line 5 by 1.5.		7. Proportional Obligation Number of overnights with other parent divided by 365. If greater or equal to 75%, enter 1. If less than or equal to 25%, enter 0.		8. Parents Obligation Line 6 times line 7 for each child.	
	Mom	Dad	Mom	Dad	Mom
Colten Clair	\$354.51	\$1,788.19	50.1%	49.9%	\$177.61
9. EACH PARENT'S TOTAL SUPPORT (total from all boxes)				MOM	DAD
				\$177.61	\$881.33
10. RECOMMENDED SUPPORT (subtract lesser of line 9 from greater and enter it under parent with greater obligation)					\$703.72
Other Costs to be Considered by the Court					
a. Work-Related Child Care Costs					
b. Health Insurance premium and uninsured health care expenses					
c. Disability or Retirement dependent benefits					
d. Tax benefit for dependency exemptions					
e. Travel Expenses					
Prepared By _____ Date _____					

From the offices of: Bannock County Court Assistance Office

In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs

Tracy J Clair

Defendant,

Continued Support Worksheet

As of 5/7/2025 when [REDACTED] turns 18, no children will remain in the home.

Continued Support Worksheet - Page 1 of 1

FILED
 2011 NOV 10 AM 9:16
 BY [Signature]
 DEPUTY CLERK

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
 THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
 MAGISTRATE DIVISION**

CHARLES MALCOLM CLAIR,	)	Case No. CV-2010-2989-DR
)	
Plaintiff,	)	SECOND AMENDED
	)	JUDGMENT AND
vs.	)	DECREE OF DIVORCE
)	
TRACY JO CLAIR,)	
)	
Defendant.)	
_____)	

The above entitled matter came before the Court for trial on June 1, 2 and 3 and on July 21 and 22, 2011. Charles M. Clair (hereinafter “the father”) was present and represented by Frederick Belzer. Tracy Jo Clair (hereinafter “the mother”) was present and represented by Nick Nielson. Trial proceeded before the Court. At the conclusion thereof, the Court took the matter under advisement. The Court issued Findings of Fact and Conclusions of Law on August 15, 2011. A judgment and decree of divorce was entered on August 16, 2011.

On August 24, 2011, counsel for the parties stipulated to a hearing without notice concerning the parties’ conflicting interpretations of the court’s decision and order. The father and his counsel Frederick F. Belzer were present. The mother was represented by her counsel Nick L. Nielson. In particular, the parties had questions concerning custody of the child during

the first four months following the entry of the custody order based upon pages 33 and 34 of the court's findings of fact and conclusions of law. The Court issued Amended Findings of Fact and Conclusions of Law on August 25, 2011. An Amended Judgment and Decree of Divorce was entered on August 25, 2011.

On September 7, 2011, the mother sought permission to appeal directly to the Idaho Supreme Court. In doing so, the mother filed her affidavit and pointed out numerous purported “[d]iscrepancies in Judge’s order”. This court denied the mother’s motion. *Order Denying Motion for Permission to Appeal to the Idaho Supreme Court, filed September 9, 2011.*

On September 7, 2011, the court addressed some of the mother’s concerns and advised that it would make amendments to its judgment and order to reflect the correct dates of trial (a clerical error) and to amend the order to allow the mother to return to Pocatello by January 15, 2012, so she and the child can take advantage of an alternative shared custody arrangement that required her to return on or before December 15, 2011.

In addition, since the last hearing, the court pursuant to its authority under Rule 60(a) IRCP determined it would amend its findings of fact, conclusions of law and order and its judgment to identify the child of the parties as “C.C.”, rather than by his first and last name.

The Idaho Supreme Court and the Idaho Supreme Court has allowed her direct appeal under Rule 12.1 of the Idaho Appellate Rules. This is the final judgment and order of this court.

Now, a second amended decree of divorce shall be entered upon good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Court has jurisdiction over the parties as well as over child custody and related matters and the division of property and debts.

2. The Plaintiff and the Defendant shall be granted a Decree of Divorce from one another upon the grounds of irreconcilable differences, the marital relationship between the parties shall be dissolved, and the parties returned to the status of single persons.
3. During the course of the marriage, the parties incurred certain community property. Plaintiff shall receive as his sole and separate property the items listed in Exhibit B attached hereto and incorporated by reference, all of his personal items and belongings, as well as all other property currently in his possession.
4. During the course of the marriage, the parties incurred certain community property. Defendant shall receive as her sole and separate property the items listed in Exhibit B attached hereto and incorporated by reference, all of her personal items and belongings, as well as all other property currently in her possession.
5. During the course of the marriage, the parties incurred certain community debts. A practical and fair division of community debt requires the court to order that the parties pay the debts assigned to them as listed in Exhibit B attached hereto and incorporated by reference.
6. Any debt incurred by either the Plaintiff or Defendant since the date of separation of the parties in June 2010, shall be the separate debt of the party incurring the debt.
7. It is in the best interests of the minor child of the marriage, C.C. to be in the joint legal and joint physical custody of the parties, and the parties shall be awarded joint legal and joint physical custody of the child.

8. The legal rights and duties incident to joint legal custody include, but are not limited to, the particulars set out in Exhibit A attached hereto and incorporated by reference and the parents will conduct themselves in conformance therewith for the best interest of the child.
9. If the mother chooses to reside in Reno following the divorce, the mother shall begin paying to the father, monthly child support payments through Idaho Child Support Receipting, P.O. Box 70008, Boise, Idaho 83707, commencing August 16, 2011, in the sum of \$244.00 per month. See, Exhibit C attached to the court's Findings of Fact and Conclusions of Law. The mother shall receive one-half (1/2) abatement of her child support obligation during any month(s) of summer when she has the child in excess of fourteen days.
10. If the mother chooses to return to reside in the Pocatello-Chubbuck, Idaho community and establishes residency before January 15, 2012, the father shall begin paying to the mother, monthly child support payments through Idaho Child Support Receipting, P.O. Box 70008, Boise, Idaho 83707, commencing the first of the month in which the mother establishes residency, in the sum of \$1016.00 per month. See, Exhibit D attached to the court's Findings of Fact and Conclusions of Law.
11. If the mother chooses to return to reside in the Pocatello-Chubbuck, Idaho community and establishes residency between January 16, 2012 and August 15, 2012, the father shall begin paying to the mother, monthly child support payments through Idaho Child Support Receipting, P.O. Box 70008, Boise, Idaho 83707, commencing the first of the month in which the mother establishes residency, in

the sum of \$677.00 per month. See, Exhibit E attached to the court's Findings of Fact and Conclusions of Law.

12. The father shall be entitled to claim the dependency exemptions for the child on his income tax returns.
13. The father can provide medical/health insurance for the benefit of the minor child which is available through his employment. The parents shall apportion between them, based upon their gross annual income used for calculation of child support, any and all costs incurred in excess of insurance for medical, dental, orthodontic, optical and other health care for the benefit of the child. The provisions for medical/health insurance and non-insured costs shall continue for the benefit of the child as long as that child is entitled to child support benefits. Based upon current anticipated future gross annual income, the father shall be responsible for 83% and the mother 17% of all non-insured medical and other health care expenses for the parties' minor child.
14. Any order providing for medical support for the benefit of the minor child shall also be subject to the following mandatory notices and provisions:

MEDICAL/HEALTH CARE EXPENSES

Any claimed health care expense for a minor child, whether or not covered by insurance, which would result in an actual out-of-pocket expense to a parent who did not consent to the expense of over \$500.00, must be approved in advance, in writing, by both parents or by prior Court order. Relief may be granted by the Court, for failure to comply under extraordinary circumstance, and the Court may in its discretion apportion the incurred expense in some percentage other than that in the existing support order, and in so doing, may consider whether consent was unreasonably requested or withheld.

NOTICE OF MEDICAL ENFORCEMENT

This order is enforceable by allowing the Department of Health and Welfare or an obligee parent to enforce medical coverage as provided under Chapter 12, Title 32, of the Idaho Code. A National Medical Support Notice shall be sent to the obligor parent's employer pursuant to the provisions of Idaho Code 32-1214C requiring the obligor parent's employer to enroll the minor and dependent children in a health benefit plan, if available, unless notice of an exception is provided under the provisions of Idaho Code 32-1214D; and, the employer shall be directed to withhold any required premium from the obligor parent's income or wages.

15. Any child support order that is entered shall be enforceable by income withholding under Chapter 12, Title 32, Idaho Code and shall contain the following mandatory notices and provisions:

IMMEDIATE AND AUTOMATIC INCOME WITHHOLDING

This order is enforceable by immediate income withholding as of the date of this order under Chapter 12, Title 32, Idaho Code. This immediate income withholding order will be issued to your employer or other person who pays your income without additional notice to you.

NOTICE OF LIEN

This support order shall be enforced by the filing of a state wide lien upon all real and personal property of the obligor if the delinquency in the support obligation is equal to \$2,000.00 or 90 days of support, whichever is less.

16. The parents shall apportion between them in the same percentages used for division of non-insured medical expenses, any and all costs incurred for work-related or school-related daycare expense incurred for the benefit of the minor child by either parent. A parent's share of such expense shall be remitted directly to the parent incurring the expense on or before the 1st day of each month, if it is incurred on a fixed monthly basis. Otherwise, the parent owing reimbursement for non-routine work-related daycare expense shall remit their share of the

expense to the other parent within thirty (30) days after receipt of written notice of the expense incurred.

17. Within ten (10) days, the parties and counsel for the parties shall jointly cooperate in the drafting and submission of vehicle title transfers, and any other documentation necessary to separate the parties' ownership of assets and financial obligations divided between them.

18. The mother shall advise the court through counsel as to any decision to relocate herself to the Pocatello-Chubbuck, Idaho area, if any. Until she makes her decision, the child shall be returned to the care and custody of the father on Sunday, August 28, 2011, upon the father's arrival at the airport in Reno, Nevada at approximately noon. The child shall be delivered to the father by the mother within thirty (30) minutes of the father's arrival in Reno. The child shall primarily reside with the father under the terms and conditions applicable to the potential choice of the mother to continue to permanently reside in Reno, Nevada

19. Each party shall bear their own costs and attorneys fees.

DATED this 9th day of November, 2011.

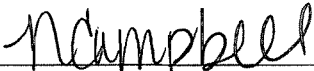

HONORABLE RICK CARNAROLI
SIXTH DISTRICT MAGISTRATE JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 10 day of November, 2011, a true copy of this Second Amended Judgment and Decree of Divorce was hand delivered to:

Frederick F. Belzer
Attorney at Law
P.O. Box 4947
Pocatello, ID 83205

Nick L. Nielson
Attorney at Law
P.O. Box 6159
Pocatello, ID 83205




Nichole Campbell, Deputy Clerk

EXHIBIT "A"

PROVISIONS FOR LEGAL AND PHYSICAL CUSTODY

The provisions for the legal and physical custody of the minor child of Charles Clair and Tracy Clair shall be as follows:

1. Legal and Physical Custody. The parents shall be awarded the joint legal and physical custody of their minor child 

IF THE MOTHER MOVES FROM THE POCATELLO AREA PERMANENTLY

The Pocatello area is defined as the geographic area that is 25 miles or less outside of the incorporated city limits of Pocatello, Idaho. A permanent move is failure to establish a residence in the Pocatello area on or before August 15, 2012.

In the event that the mother permanently moves from the Pocatello area, the parents shall alternate physical custody with the father having primary physical custody during the school term and a portion of the summer as set forth below and with the mother having primary physical custody of the child for a portion of the summer as set forth below. The physical custody arrangement shall be fixed based on the mother living in Reno, in a state other than Idaho, or in a community twenty-five (25) miles or more distant from Pocatello, Idaho, and the father living in Pocatello, Idaho, as follows:

- a. Holidays/Special Occasions. The parents shall alternate physical custody of the minor child for the following holidays and special occasions:

- (1). Thanksgiving Holiday. The parents shall alternate physical custody of the minor child for the Thanksgiving holiday, with the mother entitled to this holiday in odd-numbered

years and the father in even-numbered years. The period of physical custody for this holiday shall be from the Friday prior to Thanksgiving Day until the Friday that follows Thanksgiving Day.

(2). Christmas Holiday. The parents shall each be entitled to a portion of the child's Christmas holiday each year, with the father having the first portion in odd-numbered years and the mother in even-numbered years and with the father having the second portion in even-numbered years and the mother in odd-numbered years. The period of physical custody for the first portion of the Christmas vacation shall start on the day the child is released from school for Christmas vacation and continue until December 27. The period of physical custody for the second portion of the Christmas vacation shall be from December 27 and continue until the day prior to when the child is to return to school in Pocatello-Chubbuck School District No. 25.

(3). Spring Break. The mother shall be entitled to physical custody of the minor child during every Spring Break. The period of physical custody for the Spring Break shall start on the day children are released from school and continue until the Friday prior to the day children return to school in Pocatello-Chubbuck School District No. 25.

b. Summer Visitation. The parents shall share the child's summer. Summer shall be defined as the time that school is not in session according to the Pocatello-Chubbuck School District No. 25 Academic Calendar. The mother is entitled to nine (9) weeks of the summer commencing in 2012 and each summer thereafter and the father is entitled to the remainder of the summer. The mother's period of physical custody during the summer shall start on the day

[Type text]

of her choosing, but shall be scheduled by her to end at least two weeks prior to the start of the school year according to the Pocatello-Chubbuck School District No. 25's Academic Calendar.

c. Unscheduled Visits. When a parent is visiting for a short period in the town where the parent with physical custody is residing, that parent shall be entitled to an unscheduled visit with the child for up to ten (10) hours selected by the visiting parent, conditioned on giving at least 72 hours advance written notice of the date and time of the visit.

d. Transportation. The parents shall share equally the cost and means of transportation to enable the exchange of physical custody, with the parents to agree in writing and select a midpoint to meet and exchange physical custody if they mutually agree that automobile transportation is used. If the parties do not agree in writing on a midpoint for a custody exchange, the party commencing his or her custody time shall be responsible to pick up the child at the residence of the party turning over custody of the child. If airline transportation is used upon mutual written agreement between the parties, the parents shall share equally the cost of the airline ticket, with the father to purchase the airline ticket and the mother to immediately reimburse the father for her share of the cost. If airline travel is to be utilized, the parents shall coordinate to purchase the airline tickets at the lowest possible cost. Absent written agreement, airline travel shall not be used.

IF MOTHER RETURNS TO POCATELLO BY 12/15/2011

Unless a different schedule is otherwise agreed to in writing signed by both parents, the following schedule shall be strictly followed and will be enforceable by contempt proceedings and by law enforcement. A return to Pocatello shall be defined as the mother's return to reside

permanently within twenty-five miles of Pocatello, Idaho. In that event, the parents shall share physical custody 65/35% overnight custody basis. The mother shall have overnight custody of the children on 65% of the overnights. The father shall have overnight custody on 35% of the overnights. The weekly schedule for the child shall be in two week blocks as follows:

	Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat.
Week 1	Dad	Dad	Mom	Mom	Mom	Mom	Mom
Week 2	Mom	Mom	Mom	Mom	Dad	Dad	Dad

The shared custody schedule set forth above shall commence on the Sunday following the date when the mother establishes permanent residence in the Pocatello area.

Beginning in 2012, every summer, the father shall be entitled to a single two (2) week period of uninterrupted vacation time with the child. Summer shall be defined as the time that school is not in session according to the Pocatello-Chubbuck School District No. 25 Academic Calendar. Every summer the mother shall also be entitled to a single two week period of uninterrupted vacation time with the child. On or before April 15, 2012 and in each year thereafter, the parents shall select their vacation weeks and communicate their selections to one another in writing. If by chance in any year there is a conflict in the proposed vacation dates for both parents, if the parents cannot agree to reschedule one vacation or another, the mother's choice takes precedence in even numbered years and the father's choice takes precedence in odd numbered years. The parents are not required to take the child on a vacation out of town. This vacation time can be spent at home, with family, or traveling with

[Type text]

the parent entitled to the vacation time.

UNLESS OTHERWISE AGREED IN WRITING, ALL CUSTODY EXCHANGES SHALL TAKE PLACE PROMPTLY AT 6:00 P.M. ON THE DAY OF EXCHANGE. THE PARENT COMMENCING HIS OR HER CUSTODY PERIOD WITH THE CHILD SHALL BE RESPONSIBLE TO PICK THE CHILD UP AT THE HOME OF THE PARENT WHO IS ENDING HIS OR HER CUSTODY PERIOD WITH THE CHILD.

HOLIDAYS AND SPECIAL DAYS

Holiday and special day custody shall take precedence over the two week rotation days.

When full week periods of uninterrupted time with the child are taken for summer vacations, Thanksgiving, and Christmas, those one week or two week periods shall commence on the Sunday night immediately preceding the vacation or holiday, and at the end of the vacation or holiday, the two week rotation will pick up exactly where it left off prior to the beginning of any uninterrupted period for vacation, Thanksgiving, or Christmas.

Beginning in 2012 and in all even numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving. Beginning in 2012 and in all even numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas.

Beginning in 2011 and in all odd numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas. Beginning in 2011 and in all odd numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving.

Regardless of the two week rotation schedule, the child shall stay overnight with the mother on Mother's Day night and the mother's birthday. Regardless of the two week rotation schedule, the child shall stay overnight with the father on Father's Day night and the father's birthday. In even numbered years the child shall stay overnight with the father on his birthdays. In odd numbered years, the children shall stay overnight with the mother on his birthday.

IF MOTHER RETURNS TO POCATELLO BETWEEN 12/16/2011 AND 08/15/2012

Unless a different schedule is otherwise agreed to in a writing signed by both parents, the following schedule shall be strictly followed, will be enforceable by contempt proceedings and by law enforcement. A return to Pocatello shall be defined as the mother's return to reside permanently within twenty-five miles of the incorporated city limits of Pocatello, Idaho. In the event that the mother returns to Pocatello after four months and prior August 15, 2012, the parents shall share physical custody in Pocatello on an equal 50/50% overnight custody basis. The mother shall have overnight custody of the children on 50% of the overnights. The father shall have overnight custody on 50% of the overnights. The weekly schedule for the child shall be in two week blocks as follows:

	Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat.
Week 1	Mom	Mom	Mom	Mom	Mom	Mom	Mom
Week 2	Dad	Dad	Dad	Dad	Dad	Dad	Dad

The shared custody schedule set forth above shall commence on the Sunday following the date when the mother establishes permanent residence in the Pocatello area.

[Type text]

Beginning in 2012, every summer, the father shall be entitled to a single two (2) week period of uninterrupted vacation time with the child. Summer shall be defined as the time that school is not in session according to the Pocatello Chubbuck-School District No. 25 Academic Calendar. Every summer the mother shall also be entitled to a single two week period of uninterrupted vacation time with the child. On or before April 15, 2012 and in each year thereafter, the parents shall select their vacation weeks and communicate their selections to one another in writing. If by chance in any year there is a conflict in the proposed vacation dates for both parents, if the parents cannot agree to reschedule one vacation or another, the mother's choice takes precedence in even numbered years and the father's choice takes precedence in odd numbered years. The parents are not required to take the child on a vacation out of town. This vacation time can be spent at home, with family, or traveling with the parent entitled to the vacation time.

UNLESS OTHERWISE AGREED IN WRITING, ALL CUSTODY EXCHANGES SHALL TAKE PLACE PROMPTLY AT 6:00 P.M. ON THE DAY OF EXCHANGE. THE PARENT COMMENCING HIS OR HER CUSTODY PERIOD WITH THE CHILD SHALL BE RESPONSIBLE TO PICK THE CHILD UP AT THE HOME OF THE PARENT WHO IS ENDING HIS OR HER CUSTODY PERIOD WITH THE CHILD.

HOLIDAYS AND SPECIAL DAYS

Holiday and special day custody shall take precedence over the two week rotation days. When full week periods of uninterrupted time with the child are taken for summer vacations, Thanksgiving, and Christmas, those one week or two week periods shall commence on the Sunday night immediately preceding the vacation or holiday, and at the end of the vacation or holiday, the two week rotation will pick up exactly where it left off prior to the beginning of

any uninterrupted period for vacation, Thanksgiving, or Christmas.

Beginning in 2012 and in all even numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving. Beginning in 2012 and in all even numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas.

Beginning in 2011 and in all odd numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas. Beginning in 2011 and in all odd numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving.

Regardless of the two week rotation schedule, the child shall stay overnight with the mother on Mother's Day night and the mother's birthday. Regardless of the two week rotation schedule, the child shall stay overnight with the father on Father's Day night and the father's birthday. In even numbered years the child shall stay overnight with the father on his birthdays. In odd numbered years, the child shall stay overnight with the mother on his birthday.

The child shall spend all other holidays not specified with the parent with whom he is regularly scheduled to be under any of the three custody schedules stated above.

2. Parenting Rules and Regulations. The rules shall apply whether the mother returns to the Pocatello, or whether she remains outside of the Pocatello area. While the parents have

[Type text]

physical custody of the minor child, the parents shall conduct themselves for the best interests of the child, to include the following provisions:

a. Direct Communication. The parents shall not use the child as a messenger, or make the child feel responsible for any misunderstandings which may arise between the parents.

b. Care. While the child is in the physical custody of a parent, that parent shall provide the child with: (a) regular and nutritious food, (b) clean and appropriate clothing, (c) sanitary and reasonably private living and sleeping quarters, and (d) appropriate medical examinations and treatment.

c. Supervision. While the child is in the physical custody of a parent, that parent shall: (a) train the child to obey and respect the children's teachers and the law, (b) require the child to attend all regular sessions of school until graduation, unless excused by medical reasons, the school, or the Court, and (c) personally supervise and control the conduct and activities of the child, except when the child is at school or in known or usual recreational activities, or in the immediate care of another competent, adult person.

d. Limitations. While the child is in the physical custody of a parent, that parent shall not engage in or permit in the presence of the child any excessive alcohol consumption; unlawful drug use; sexually explicit activities and/or permit any sexually explicit or suggestive photos, videos, movies or magazines to be left where a child may see them; and/or, violence or disrespect for law and order. That parent shall also ensure that the child does not engage in any objectionable activities, including, but not limited to, the use of alcohol and/or unlawful drugs.

e. Restraints. The parents, and any other persons under their direction and control, shall not do, attempt, or threaten any act to injure, maltreat, vilify, malign, defame, or molest the other parent, the child, or any person lawfully supervising the child; nor shall either parent attempt, or condone any attempt (directly or indirectly) by any artifice or subterfuge whatsoever, to estrange or alienate the minor child from the other party, or to injure or impair the child's mutual love and affection for the other parent.

f. Privacy. Neither parent shall intrude upon or invade the privacy of the other parent. Neither parent shall interfere with the lifestyle differences which may exist in the other's home, unless such lifestyle difference is later found by the court to be harmful to the child.

g. Love and Affection. Each parent shall exert every effort to maintain free access and unhampered contact between the child and the other parent, and shall foster love and affection between the child and the other parent. Neither parent shall do anything, nor permit any other person residing in the household to do anything, which would estrange the child from the other parent, or that would distort the child's opinion of the other, or would impair the child's love and respect for the other parent.

h. Telephone Calls and Electronic Communication. Each parent shall be entitled to telephone and electronic communication with the child at reasonable times, frequency and duration, and the other parent shall respect the child's right to privacy during such conversations. Telephonic communication includes, but is not limited to phone calls and text messaging. Electronic communication includes but is not limited to internet

[Type text]

communication through e-mail, social media such as Facebook, and audio/visual communication such as Skype.

i. Mail. Each parent shall be entitled to correspond with the child through the mail, by text message, or through the internet and the other parent shall not read, censor, or otherwise interfere with such correspondence unless such communication is later found to be harmful by the court.

j. Interference. If the child is invited or desires to participate in any activity which may interfere with one parent's rights, the other parent shall not encourage, permit or consent to such activities without prior approval of the parent entitled to physical custody of the child during that time, and, shall not belittle the parent's denial of such approval.

k. Activities. While the child is in a parent's physical custody, that parent shall be entitled to take the child to any reasonable place and participate in any reasonable activity.

l. Readiness. The child shall be ready and promptly available for all custody exchanges. Each child shall be sent with sufficient clothing which is appropriate for ordinary activities; and, if advised in advance, with special or additional clothing when it is appropriate for any special activities. However, neither parent shall be obligated to purchase new clothing solely to comply with this provision.

m. Consultations. The parents shall confer as frequently as necessary by telephone, text, e-mail, internet, or mail to inform the other about the needs, activities, discipline, welfare, education, health, religious upbringing, and development of the child.

The objective is, so far as possible, to adopt a mutually harmonious policy for the child's upbringing and the parents shall discuss these matters with a goal of shared decision making. If there is disagreement over any of these issues and the parents cannot resolve those differences, then disputes shall be submitted to a mediator for resolution before legal action is taken.

n. Records. Upon request, the parents shall provide each other with the child's educational, health or other records, but the parent requesting copies shall be responsible for the costs of copies. Both parents shall be responsible for keeping the other parent advised of all major school, social, athletic, and religious events in which the child participates and of which the other parent may not be aware.

o. Selections. Except in emergency situations, all schools, health care providers, and counselors shall be selected by the parents jointly. If there is disagreement over any of these issues and the parents cannot resolve those differences, then disputes shall be submitted to a mediator for resolution before legal action is taken.

p. Emergencies. Each parent shall be empowered to obtain emergency health care for a child without the consent of the other parent. However, each parent shall promptly notify the other, as soon as possible, if an emergency illness or injury requires a physician's care.

q. Non-emergency Medical/Health Care. Each party shall notify the other parent as soon as possible if a non-emergency illness or injury requires the care of a physician or other health care provider. All non-emergency matters for surgery, medical, dental, orthodontic, optical or other health care shall be discussed and resolved before treatment

[Type text]

is commenced and the children shall be treated for all non-emergency medical, dental, orthodontic or optical matters by a medical provider mutually acceptable to both parties. Both parents shall make reasonable efforts to keep the other parent informed of the child's medical condition while in their physical custody. If the parents cannot agree on the nature or extent of medical or other health care and/or shall the parents not agree on the person to provide such care, then the parents shall pursue resolution through a mediator before legal action is taken.

r. Name. The child shall continue to be known legally and publicly by the father's surname. The child shall not, for any purpose or reason, use or assume the name of any subsequent spouse of either parent, or any other surname.

s. Address and Telephone. Each parent shall provide the other with the child's address and telephone number while in that parent's physical custody and/or during periods of custody, visitation, or vacations. Reasonable advance notice shall be provided for any anticipated travel and itineraries shall be provided upon request.

t. Notice of Intended Move. If either parent plans on permanently moving their principal place of residence a distance of more than twenty five (25) miles from that where they are presently residing, they shall be required give prior notice to the other parent so that the court can be asked to determine appropriate provisions for future physical custody based on that intended move, if any are needed. Notice shall be required to be given not less than sixty (60) days in advance of any intended permanent move, if known; or, if an intended permanent move does not allow the giving of sixty (60) days prior notice, then at a minimum notice shall be given within twenty-four (24)

hours of the time the parent determines that a permanent move is necessary. The written notice shall contain: (a) the new intended address; (b) the mailing address, if not the same; (c) the telephone number, if known; (d) the date of the intended move; (e) specific reasons for the move; and (g) a proposed custody and visitation schedule, if changes are required from the provisions set forth above. The child shall not be moved to a new residence that precludes continuation of the custody arrangement set forth above unless and until the court enters an order allowing that move.

[Type text]

EXHIBIT B

ASSETS

To the Plaintiff

2006 Chevy Silverado
Firearms (except .32 pistol)
Power tools
Lawn and garden tools
Bed
Laptop computer
Freezer
Husband's clothing & jewelry
Other property in his possession

To the Defendant

2008 Toyota Highlander
.32 pistol
Wife's jewelry & clothing
Art objects
Washer
Dryer
Couch
Bed
Other property in her possession

DEBTS

To the Plaintiff

All debt he incurred after
separation
ICCU debt (\$25,000)
Toyota Credit Services (\$27,000)
Discover Card (\$2,000)
Husband's student loan (\$240,000)
Moscow Family Medicine and Gritman
Hospital bonus repayment (\$30,000)
ATT iPhone contract

To the Defendant

All debt she incurred after
separation
Wife's student loan (\$13,000)

NICK L. NIELSON- Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Ave., Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

FILED
BANNOCK COUNTY
2011 NOV 18 PM 1:49
CL
DEPUTY CLERK

Attorney for Appellant/Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

CHARLES M. CLAIR, JR.,

Plaintiff,

vs.

TRACY J. CLAIR,

Defendant.

CASE NO. CV-2010-2989-DR

**NOTICE OF APPEAL FROM
MAGISTRATE COURT TO
IDAHO SUPREME COURT**

TO: THE ABOVE-NAMED PLAINTIFF/RESPONDENT, Charles M. Clair, Jr., and his ATTORNEY, Frederick F. Belzer (P.O. Box 4947, Pocatello, Idaho 83205) AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. Appellant/Defendant Tracy Jo Clair ("Tracy"), hereby appeals against Respondent/Plaintiff Charles M. Clair, Jr., from the Bannock County Magistrate Court to the Idaho Supreme Court from the Amended Judgment and Decree of Divorce and Amended Findings of Fact Conclusions of Law and Order entered August 25, 2011 and the Second Amended Findings of Fact Conclusions of Law and Order and Second Amended Judgment and Decree of Divorce entered November 10, 2011 in Bannock County Case No. CV-2010-2989-DR, the Honorable Rick Carnaroli presiding.

2. On August 16, 2011, the magistrate court issued its initial Judgment and Decree of Divorce and Findings of Fact Conclusions of Law. On August 25, 2011, the court issued its Amended Judgment and Decree of Divorce and Amended Findings of Fact Conclusions of Law. On August 26, 2011, Defendant Tracy Clair filed with the magistrate court her Motion for Permission to Appeal to the Supreme Court and her Motion to Stay Portions of the Court's Amended Judgment & Decree of Divorce & Amended Findings of Fact Conclusions of Law & Order Entered August 25, 2011. Defendant requested that an expedited hearing on her Motion to Stay be held on September 7, 2011, but Judge Rick Carnaroli denied the Motion. The hearing on Defendant Clair's Motion to Appeal to the Supreme Court, however, was held on September 7.

On September 20, 2011, Defendant Tracy Clair filed with the Idaho Supreme Court her Motion for Permission to Appeal Amended Judgment and Decree of Divorce and Amended Findings of Fact Conclusions of Law Entered August 25, 2010, together with a supporting Memorandum and the Affidavits of Tracy Jo Clair and Nick L. Nielson.

The hearing on Defendant Clair's Motion to Stay was held in magistrate court on September 30, 2011. At the conclusion of the hearing, Judge Carnaroli indicated that he would be issuing a Second Amended Judgment and Decree of Divorce.

On October 31, 2011, the Idaho Supreme Court issued its Order Granting Motion for Permission to Appeal. On November 10, 2011, Judge Carnaroli then issued the Second Amended Judgment and Decree of Divorce and Second Amended Findings of Fact Conclusions of Law and Order, copies of which are attached to this Notice. In the Second Amended Findings, Judge Carnaroli stated in part:

As a result of the mother's motion for permission to appeal, the court addressed some of her concerns and indicated in her affidavit and at the hearing on September 7, 2011 and advised that it would make amendments to its order to reflect the correct dates of trial (a clerical error) and to amend the order to allow the mother to return to Pocatello by January 15, 2012¹, so she and the child can take advantage of an alternative shared custody arrangement that required her to return on or before December 15, 2011. In addition, the court pursuant to its authority under Rule 60(a) IRCP will amend its findings of fact, conclusions of law and order and its judgment to identify the child of the parties as "C.C."

Second Amended Findings of Fact Conclusions of Law and Order, p. 2

In sum, the Second Amended Findings and Judgment correctly listed the dates of trial that had been listed inaccurately in the court's first two decisions, reset the date for Mother to return to Idaho to obtain sixty-five percent custody of the parties' child, and re-identified the parties' child as C.C. rather than [REDACTED]. Because the changes do not materially affect the overall outcome of the Court's first amended rulings, Appellant respectfully requests that she not be required to seek additional permission to appeal from these latest decisions. Appellant further requests that the magistrate court's Second Amended Findings of Fact Conclusions of Law and Order, and its Second Amended Judgment and Decree of Divorce, be included with the decisions from which Defendant is seeking Appeal.

3. Appellant has a right to appeal to the Idaho Supreme Court, in that Appellant filed a Motion for Permission to Appeal pursuant to I.A.R. 12 and the Supreme Court

¹ Judge Carnaroli's decision to amend the order to "allow the mother to return to Pocatello by January 15, 2012" was not rendered on September 7, 2011, but during the hearing on Defendant's Motion to Stay on September 30. Additionally, the grammatical errors found in the above quoted paragraph are as they appear in the original document.

granted Appellant's Motion on October 31, 2011. This appeal is being timely filed within twenty-one (21) days of the Court's Order.

4. This Appeal of the Amended Judgment and Decree of Divorce, Amended Findings of Fact Conclusions of Law and Order, Second Amended Judgment and Decree of Divorce and Second Amended Findings of Fact Conclusions of Law and Order is taken upon matters of law and upon matters of fact.

5. Statement of Issues on Appeal:

A. Did the magistrate judge abuse his discretion by ordering child custody in such a way as to alienate the parties' minor child from his mother?

B. Did the magistrate judge abuse his discretion by ordering child custody in such a way as to potentially harm the developmental status of the parties' minor child by depriving him of the solid bond he had with his mother and the daily nurturing he received from her the first four years of his life?

C. Did the magistrate judge abuse his discretion in ruling that the opinions of Dr. Linwood Vereen concerning recommendations for parenting time and the best interests of the child would not be permitted into evidence under Rule 702 of the Idaho Rules of Evidence?

D. In awarding 65% of overnights with the child to Mother if she relocates within a 25 mile radius of Pocatello, Idaho and 25% of overnights if she doesn't, did the magistrate judge abuse his discretion by improperly infringing upon Mother's protected liberty interests to choose where to live, work, and raise her son?

E. Did the magistrate judge abuse his discretion by ordering child custody in such a way as to punish Mother for not returning to Idaho to be with the parties' minor child?

F. Did the magistrate judge abuse his discretion by ruling that "[t]welve months gives [mother] time to decide if living in Reno is more important to her than being a regular presence in [REDACTED] life in Pocatello"

G. In ruling "in the best interests of the child", did the magistrate judge arbitrarily disregard credible and unimpeached testimony that when the parties separated, Mother had to return to her parent's home in Nevada because Father left her in such a state that she had no home and no job in Idaho?

H. In ruling "in the best interests of the child", did the magistrate judge abuse his discretion by requiring Mother to move back to Pocatello in order to retain primary residential custody of the parties' minor child regardless of whether Mother had employment in the Pocatello area?

I. Did the magistrate judge abuse his discretion by refusing to allow Mother to have primary physical custody of the parties' minor child because the Mother did not supposedly attempt to obtain employment in Pocatello, Idaho in a timely fashion?

J. Did the trial court abuse its discretion in calculating/awarding child support?

K. Is the Appellant entitled to an award of attorney fees and costs pursuant to Idaho Code §32-704 and I.A.R. 41 on appeal?

6. An order has not been entered sealing any portion of the record.

7. Appellant requests the preparation of the standard reporter's transcript of the entire trial conducted in this matter on June 1, 2, and 3, 2011 and on July 21 and 22, 2011.

Appellant further requests the following:

A. The transcript for the hearing on August 24, 2011 regarding errors in the Court's August 16, 2011 Judgment and Decree of Divorce and Findings of Fact Conclusions of Law;

B. The transcript for the hearing on September 7, 2011 on Defendant's Motion for Permission to Appeal; and

C. The transcript for the hearing on September 30, 2011 on Defendant's Motion to Stay.

8. Pursuant to Rule 28(c) I.A.R. Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under I.A.R. 28:

A. Defendant Tracy Clair's Motion to Stay Portions of The Court's Amended Judgment & Decree of Divorce & Amended Findings of Fact Conclusions of Law & Order Entered August 25, 2011, dated August 26, 2011;

B. Memorandum in Support of Defendant Tracy Clair's Motion to Stay Certain Portions of The Court's Amended Judgment & Decree of Divorce & Amended Findings of Fact Conclusions of Law & Order Entered August 25, 2011, dated August 26, 2011;

C. Affidavit of Tracy Clair dated August 26, 2011.

D. Defendant Tracy Clair's Motion for Permission to Appeal The Court's Amended Findings of Fact Conclusions of Law & Order & Amended Judgment & Decree of Divorce Entered August 25, 2011, dated August 26, 2011; and

E. Memorandum in Support of Defendant Tracy Clair's Motion for Permission to Appeal The Court's Amended Findings of Fact Conclusions of Law & Order & Amended Judgment & Decree of Divorce Entered August 25, 2011, dated August 26, 2011;

9. I hereby certify that:

A. A copy of this Notice of Appeal has been made upon the transcriber.

B. The transcriber has been paid the minimum fee of \$100.00 for preparation of the transcript for the appeal of this matter and will be paid the remainder upon the transcriber's calculation of fees for preparation of the transcript.

C. An initial fee for preparation of the clerk's record of \$100.00 has been paid to the Clerk of the District Court.

D. Appellate filing fees of \$15.00 to the Clerk of the District Court and \$86.00 to the Idaho Supreme Court have been paid.

E. Service has been made upon all parties required to be served pursuant to I.A.R. 20.

DATED this 18 day of November, 2011.



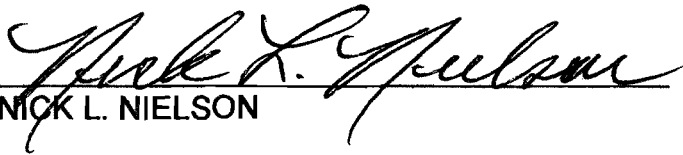
Nick L. Nielson, Attorney for Appellant

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 18 day of November, 2011, I served a true and correct copy of the foregoing **NOTICE OF APPEAL** by causing a copy to be delivered to the following persons by U.S. mail, postage pre-paid, at the following addresses:

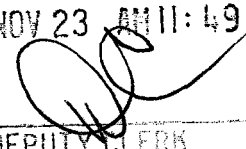
Fred F. Belzer
Attorney at Law
P.O. Box 4947
Pocatello, ID 83205-4947

Sherrill Grimmett
1109 Wilson #1
Pocatello, ID 83201



NICK L. NIELSON

FREDERICK F. BELZER
 Attorney at Law
 850 East Center
 P.O. Box 4947
 Pocatello, Idaho 83205
 (208) 234-7118
 Idaho State Bar No. 2535
 Attorney for Respondent/Plaintiff

FILED
 BANNOCK COUNTY
 CLERK OF THE COURT
 2011 NOV 23 AM 11:49
 BY 
 DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
 MAGISTRATE DIVISION

CHARLES MALCOLM CLAIR, JR.,	)	Case No. CV-2010-2989-DR
)	
Plaintiff,)	
)	
vs.	)	NOTICE OF REQUEST FOR
	)	ADDITIONAL DOCUMENTS IN THE
TRACY JO CLAIR,	)	RECORD IN THE APPEAL FROM
	)	MAGISTRATE COURT TO IDAHO
Defendant.	)	SUPREME COURT
_____)	

TO: THE ABOVE-NAMED APPELLANT/DEFENDANT, Tracy J. Clair, and her attorney, Nick L. Nielson (P.O. Box 6159, Pocatello, ID 83205) AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. Pursuant to Rule 28(c) I.A.R., Respondent requests that the following documents be included in the Clerk's Record in addition to those automatically included under I.A.R 28:

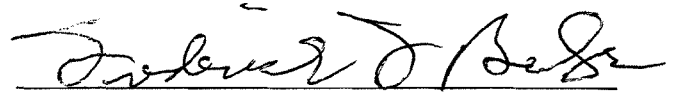
A. Plaintiff's Opposition to Defendant's Motion to Stay Portions of the Court's Amended Judgment and Decree of Divorce and Amended Findings of Fact Conclusions of Law and Order Entered August 25, 2011 dated September 1, 2011.

1. NOTICE OF REQUEST FOR ADDITIONAL DOCUMENTS IN THE RECORD IN THE APPEAL FROM MAGISTRATE COURT TO IDAHO SUPREME COURT

- B. Order Granting Motion to Expedite - Denied dated September 2, 2011.
- C. Order Denying Motion for Permission to Appeal to the Supreme Court of Idaho dated September 8, 2011 and filed September 9, 2011.

2. This request is made for the purpose of providing additional portions of the Magistrate Court record necessary to supplement the request of Appellant/Defendant set forth in paragraph 8 of the Notice of Appeal from Magistrate Court to Idaho Supreme Court dated November 18, 2011.

Dated this 23rd day of November, 2011.


Frederick F. Belzer

CERTIFICATE OF SERVICE

I hereby certify I am a duly licensed attorney in the State of Idaho; a resident of and with my office in Pocatello, Idaho; and on the 23rd day of November, 2011, I served a true and correct copy of the foregoing document on the party listed below as follows:

Parties served:


Method of Service

Nick L. Nielson
P.O. Box 6159
Pocatello, ID 83205

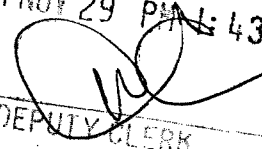
Fax 232-0048

Sherrill Grimmatt
1109 Wilson #1
Pocatello, ID 83201

First Class Mail


Frederick F. Belzer

NICK L. NIELSON- Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Ave., Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

FILED
BANNOCK COUNTY
CLERK OF THE COURT
2011 NOV 29 PM 4:43
BY 
DEPUTY CLERK

Attorney for Appellant/Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

CHARLES M. CLAIR, JR.,
Plaintiff,

vs.

TRACY J. CLAIR,
Defendant.

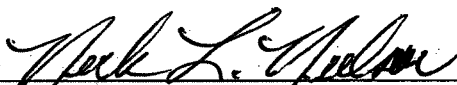
CASE NO. CV-2010-2989-DR

**NOTICE OF DISMISSAL OF APPEAL
FROM MAGISTRATE COURT TO
DISTRICT COURT**

Appellant/Defendant Tracy Jo Clair ("Tracy"), hereby dismisses her appeal against Respondent/Plaintiff Charles M. Clair, Jr., from the Bannock County Magistrate Court to the Bannock County District Court from the Amended Judgment and Decree of Divorce and Amended Findings of Fact Conclusions of Law and Order entered August 25, 2011 in Bannock County Case No. CV-2010-2989-DR, the Honorable Rick Carnaroli presiding.

The reason for this dismissal is that this matter has been accepted on appeal to the Idaho Supreme Court.

DATED this 29 day of November, 2011.



Nick L. Nielson, Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29 day of November, 2011, I served a true and correct copy of the foregoing **NOTICE OF DISMISSAL OF APPEAL** by causing a copy to be delivered in the matter set forth below to:

Fred F. Belzer
Attorney at Law
P.O. Box 4947
Pocatello, ID 83205-4947

U.S. Mail, postage prepaid
 Overnight Delivery
 Hand Delivered
 Facsimile: 208-234-7139



NICK L. NIELSON

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

FILED
BANNOCK COUNTY

2011 DEC -7 PM 1:20

BY 
DEPUTY CLERK

CHARLES M. CLAIR, JR.,)
)
Plaintiff-Respondent,)
)
vs.)
)
TRACY J. CLAIR,)
)
Defendant-Appellant,)
)
_____)

Supreme Court No. 39188

CLERK'S CERTIFICATE
OF
APPEAL

Appealed from: Sixth Judicial District, Bannock County

Honorable Judge Rick Carnaroli presiding

Bannock County Case No: CV-2010-2989-DR

Order of Judgment Appealed from: Second Amended Findings of Fact
Conclusions of Law and Order, filed the 10th of November, 2011 and Second
Amended Judgment and Decree of Divorce, filed 10th of November, 2011.

Attorney for Appellant: Nick L. Nielson, Nielson Law Office, Pocatello

Attorney for Respondent: Frederick F. Belzer, Attorney at Law, Pocatello

Appealed by: Tracy J. Clair

Appealed against: Charles M. Clair, Jr.

Notice of Appeal filed: November 18, 2011

Notice of Cross-Appeal filed: No

Appellate fee paid: Yes

Request for additional records filed: No

FILED - ORIGINAL
NOV 25 2011
Supreme Court Court of Appeals
Entered on ATS by DB

Request for additional reporter's transcript filed: No

Name of Reporter: Sherrill Grimmett

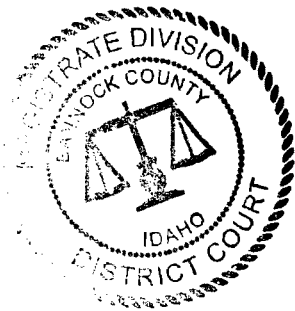
Was District Court Reporter's transcript requested? Yes

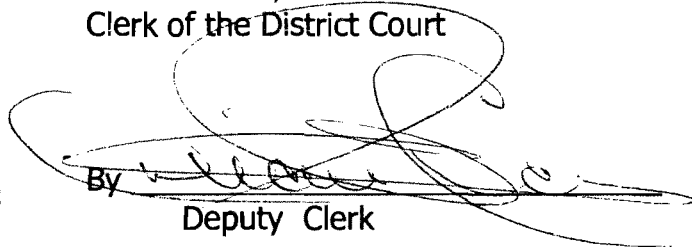
Estimated Number of Pages: unknown?

Dated November 22, 2011

DALE HATCH,
Clerk of the District Court

(Seal)



By 
Deputy Clerk

IN THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,

IN AND FOR THE COUNTY OF BANNOCK

MAGISTRATES DIVISION

FILED
BANNOCK COUNTY
CLERK
2011 DEC 27 AM 9:52
DEPUTY CLERK

CHARLES MALCOLM CLAIR, JR.,)
)
)
Plaintiff-Respondent,)
)
v.)
)
TRACY JO CLAIR,)
)
)
Defendant-Appellant.)

Supreme Court Docket
No. 39188-2011

Bannock County Docket
No. 2010-2989

Description of the hearing transcribed: Court Trial held on
June 1, 2011, June 2, 2011, June 3, 2011, July 21, 2011,
and July 22, 2011.

The transcript in the above entitled matter consisting
of 637 respectively was lodged with the District Court
Clerk at the Bannock County Courthouse in Pocatello, Idaho,
on the 27th day of December 2011.

DATED this 27th day of December, 2011.

Sherrill L. Grimmett
Sherrill L. Grimmett, Court Transcriber
Deputy Clerk

IN THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATES DIVISION

FILED
BANNOCK COUNTY
2011 DEC 27 AM 9:52

CHARLES MALCOLM CHAIR, JR.)
)
Plaintiff-Respondent,)
)
V.)
)
TRACY JO CLAIR,)
)
Defendant-Appellant.)

Supreme Court Docket
No. 39188-2011
Bannock County Docket
No. 2010-2989

Description of the hearing transcribed:

Hearing on Errors held on August 24, 2011 containing 12 pages;
Hearing on Permission to Appeal held on September 7, 2011 consisting of 11
pages; and
Hearing on Motion to Stay held on September 30, 2011 consisting of 11 pages.
The transcript in the above entitled matter was lodged with the District Court
Clerk at the Bannock County Courthouse in Pocatello, Idaho, on the 27th day of
December 2011.

DATED this 27th day of December 2011.

Sherrill L. Grimm
Sherrill L. Grimm, Court Transcriber
Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHARLES MALCOM CLAIR, JR.,)	
	)	Supreme Court No. 39188-2011
Plaintiff-Respondent,)	
)	
vs.	)	CLERK'S CERTIFICATE
)	
TRACY JO CLAIR,)	
)	
Defendant-Appellant,)	
)	
_____)	

I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Bannock, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true, full, and correct record of the pleadings and documents as are automatically required under Rule 28 of the Idaho appellate Rules.

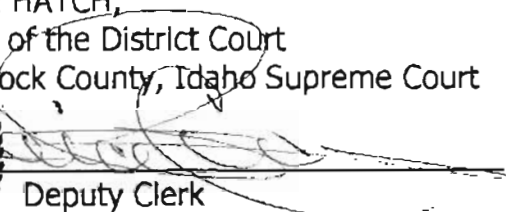
I do further certify that all exhibits, offered or admitted in the above-entitled cause, will be duly lodged with the Clerk of the Supreme Court along with the court reporter's transcript and the clerk's record as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal
of said Court at Pocatello, Idaho, this 12 day of December, 2011.

(Seal)



DALE HATCH,
Clerk of the District Court
Banrock County, Idaho Supreme Court

By: 
Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHARLES MALCOM CLAIR, JR.,)	
	)	Supreme Court No. 39188-2011
Plaintiff -Respondent,)	
)	
vs.	)	CERTIFICATE OF EXHIBITS
)	
TRACY JO CLAIR,)	
)	
Defendant–Appellant,)	
)	
_____)	

I, DALE HATCH, the duly elected, qualified and acting Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock, do hereby certify that the following are the original exhibits marked for identification and introduced in evidence at trial of the above and foregoing cause, to wit:

DEFENDANT’S EXHIBITS

- Exhibit “1” Current Monthly Bills.
- Exhibit “2” Letter from Charles Clair to Tracy.
- Exhibit “3” Background Information.
- Exhibit “5” Schedule of Payments for [REDACTED] preschool.
- Exhibit “6” Paystub from White Pine County School District.
- Exhibit “7” Applied Jobs.

- Exhibit “8” Carson City School Dist. Human Resources Department.
- Exhibit “9” Silver State Charter Schools.
- Exhibit “10” Washoe County School Dist. Printable Application.
- Exhibit “12” Case Summary – Idaho Child Support Program.
- Exhibit “13” Case Summary.

PLAINTIFF’S EXHIBITS

- Exhibit “A” E-Mails Between the Parties.
- Exhibit “B” Text Messages Between the Parties.
- Exhibit “C” Charles Clair’s Monthly Budget.
- Exhibit “D” Tracey Clair’s Monthly Budget.
- Exhibit “E” Financial Accounting of Monies Paid to Tracy Clair.
- Exhibit “F” Monies Contributed by East Party During Marriage, etc.
- Exhibit “K” Plaintiff’s Proposed Child Custody Schedule and Child Support Proposal.
- Exhibit “N” Letter from Tracy Clair to Charles Clair (undated)
- Exhibit “Q” Joint Custody by Judge Michael Redman.
- Exhibit “R” Plaintiff’s Child Support Calculations.
- Exhibit “S” Tracey Clair’s Facebook Postings.
- Exhibit “T” Defendant’s Response to Dr. Vereen’s Questionnaire, Parent Intake Questionnaire, Custody Evaluation.

Exhibit "U" Letter from Tracy Clair to Dr. Charles M. Clair Jr.

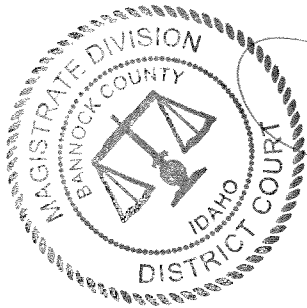
Exhibit "V" Print Out from Counseling Department, ISU/Linwood G. Vereen.

Ph.D

I FURTHER CERTIFY that the above exhibits are attached to, and made a part of, the original transcript on appeal in said cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this the 12 day of December, 2011.

(Seal)



DALE HATCH, Clerk of the District Court
Bannock County, State of Idaho

By: _____

Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHARLES MALCOM CLAIR, JR.,)	
	)	Supreme Court No. 39188-2011
Plaintiff-Respondent,)	
)	
vs.	)	CERTIFICATE OF SERVICE
)	
TRACY JO CLAIR,)	
)	
Defendant-Appellant.)	
_____)	

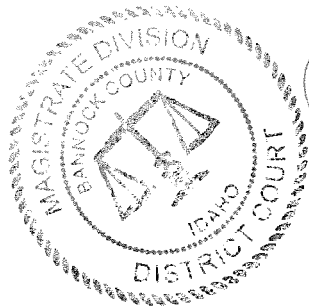
I, DALE HATCH, Clerk of the District Court of the Sixth Judicial District, of the State of Idaho, in and for the County of Bannock, do hereby certify that I have personally served or mailed, by United States mail, one copy of the REPORTER'S TRANSCRIPT and CLERK'S RECORD to each of the Attorneys of Record in this cause as follows:

Nick L. Nielson
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IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Pocatello, Idaho, this 22 day of December 2011.

(Seal)



DALE HATCH,
Clerk of the District Court
Bannock County, Idaho Supreme Court

By [Signature]
Deputy Clerk