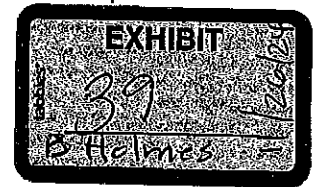


## *Jan B. Bromell Holmes' Response to Complaints*



November 12, 2024

Judicial Merit Selection Commission  
Mrs. Erin B. Crawford, Esq.  
P.O. Box 142  
Columbia, SC 29202

Re: Jan B. Bromell Holmes' Response to Capps' Complaints  
Family Court Judge, Fifteenth Judicial Circuit, Seat 1

Dear Mrs. Crawford:

I hope all is well. It is necessary for me to provide relevant facts to the Commission prior to responding to the Complaints of Emily Capps and Haley Kathryn Capps collectively and Michelle Davis Capps individually.

Michelle Davis Capps (hereinafter referred to as Mother) and Joseph Harold Capps (hereinafter referred to as Father) entered into a Custody Agreement with respect to their minor children, Haley Kathryn Capps and Emily Capps of which was approved by Horry County Family Court on July 14, 2014. Thereafter, on October 3, 2014, the parties were divorced from one another. Since the entry of the orders, several Rules to Show Cause actions were filed by both parties wherein various judges presided and issued rulings. I presided over a Rule to Show Cause Action on January 30, 31, 2017 and February 1, 2017. After two and a half days of testimony, the parties informed the Court that they had reached an agreement. The pertinent parts of the agreement as it relates to the complaints before the commission are as follows:

- (1) The parties agreed to joint custody of the minor children with Mother designated as primary custodial parent. Father was to exercise his visitation with the minor children as per the agreement already approved by the Court. In addition, Father was granted additional visitation as specified in the order.
- (2) Mother agreed, within 15 days, to have an appointment with a counselor to address the issue of her alienating the children from Father. Each parent's counselor would

recommend three names of counselors for the children and submit same to the Court and then the Court would select the Children's counselor.

- (3) The children were to be enrolled in Counseling within 30 days.
- (4) The parties were absolutely prohibited, forbidden, restrained and enjoined from discussing the litigation with the children, from denigrating the other parent to or in the presence of the children, from allowing any third party to denigrate a parent to or in the presence of the children.
- (5) Mother was to reimburse the Father the sum of \$20,000.00 which amount encompassed all reimbursements Father had requested in his Rule to Show Petition. Toward satisfaction of the amount, \$1,000.00 was withheld from Mother's alimony payment of \$10,500.00 per month for 20 consecutive months, commencing March 1, 2017.

The order in this matter was signed by me on March 17, 2017 and filed in the Clerk of Court's Office on April 11, 2017. It is attached as **Exhibit A**.

Less than 9 months later, Father presented to Judge Buckhannon an affidavit in support of a Rule to Show Cause (RTSC), and upon review of said affidavit, Judge Buckhannon executed an Order requiring Mother to appear for a 2<sup>nd</sup> RTSC initially scheduled for May 1 and 2, 2018 before Judge Norton. Michelle Davis Capps attributes the Rule to Show Cause being re-scheduled solely to Anita Floyd Lee's office emailing the court scheduler stating that Judge Holmes requested remand/retain jurisdiction of the case. I reviewed the file in preparation of this response and discovered the Order of Continuance signed by Judge Norton of which indicates that Michelle Davis Capps' attorney, Julaan Derrick, requested a continuance as she was not involved when the hearing date was established. Defendant's attorney, Anita Floyd Lee agreed to the continuance to accommodate Ms. Derrick's schedule. **See Exhibit B.**

The hearing was initially re-scheduled to September 17-18, 2018 before me, but was continued due to inclement weather (Hurricane Florence) to December 10-11, 2018 before me. **See Exhibit C.** I have no role in scheduling any initial hearings nor do I control the cases that are placed on my docket. However, once I begin a trial that is scheduled

for an insufficient amount of time, I do adjust my schedule, if there is time available to complete said trial. The trial proceeded as scheduled on December 10 and 11, 2018. There was insufficient time to complete Father's testimony on December 11, 2018, so I allocated time on Friday, December 14, 2018, to complete Father's testimony, prior to commencing my Juvenile docket for the day. After completing Father's testimony on Friday, December 14, 2018, the court was extremely concerned about Father not exercising his visitation, what appeared to be Mother's continued pattern of alienation of the parties' children from Father and both parties empowering the children to make decisions as to whether they will comply with the order as it pertains to visiting with Father. The maternal grandmother was required to bring the minor children to Court so that I inform them directly of what I expected of all parties with respect to complying with Father's court ordered visitation going forward. Haley Kathryn was 17 years old and Emily was 15 years old at the time. After meeting with the minor children and the parents in the presence of their attorneys and informing them that I expected all parties to comply with the Father's court ordered visitation going forward, Father's visitation resumed that very afternoon and went well until one week prior to the court resuming the Rule To Show Cause (RTSC) trial for completion on May 22 and 23, 2019. During this time period, Haley Kathryn reached the age of 18 on May 11, 2019. I signed "Order Following Rule To Show Cause Hearing" with hearing dates of December 10-11, 14, 2018 and May 22-23, 2019 on July 26, 2019. The order was filed on July 29, 2019. **See Exhibit D.**

I found and concluded as follows:

- (1) The Mother violated the order which prohibited, forbidden, restrained and enjoined her from degrading or denigrating the Father in the presence of the children. Specifically, Mother instructed the children to record conversations with Father during his visitation, as well as encouraged them to not vacate Father's automobile until the cell phone in issue, on which she had instructed them to record their father, was located. I further stated that this type of behavior promotes disrespect, degradation and denigration of the Father by the children-with not just the permission, but the insistence, of Mother.
- (2) I further found that the testimony established that the children do as they are told by their Mother. Further, they do as the Mother instructs or otherwise how

they feel when it comes to their Father. This is very concerning to the Court because the children have been empowered to be disrespectful to their Father. One example happened when Emily learned that her paternal grandfather was going to pick her up from school since Father was unavailable, she called her Mother, and suddenly she became sick and Mother picked her up early. Thereby preventing paternal grandfather from exercising the visitation allotted to Father. This was done without notice to Father and paternal grandfather who waited in line at school for over an hour.

- (3) I found Emily's behavior to be pure manipulation and disrespectful and that Mother was teaching the children through her participation in same that such manipulation and disrespect is acceptable. It is not.
- (4) I ordered Emily to continue counseling until the counselor stated otherwise and restricted the parents from scheduling any activities that interfered with counseling.
- (5) Although Father desired for the Court to order jail time for Mother's continuous violation, I informed Mother that I considered jail time but determined that jail time would not be beneficial because the alienation had already occurred. However, if her behavior continues, it would not be a problem for me, or for any other judge to give jail time. Visitation is mandatory, and if the Mother cannot ensure that the minor child exercises her court order visitation then perhaps custody should be changed.
- (6.) Mother was ordered to pay \$40,000.00 of Father's attorney's fees by Father deducting \$2,500.00 per month from the \$10,500.00 per month alimony payment, beginning August 1, 2019.
- (7.) Mother was also ordered to pay a \$1,500.00 fine to the Clerk of Court within 48 hours of the Final Order being filed, which was filed on July 29, 2019.

Mother appealed the Order to the South Carolina Court of Appeals on August 23, 2019. **See Exhibit E.** Things continued to go downhill with respect to Father's visitation with the children. Haley Kathryn, the eldest child reached the age of 18 on May 11, 2019. She went to the courthouse and copied the entire file on Mother and Father's case. She

took a picture of herself holding the Notice of Hearing in her hand for the December 10<sup>th</sup> and 11<sup>th</sup>, 2018 hearing dates of which I presided and sent said picture to her Father. **See Exhibit F.** Haley Kathryn referenced bad things being said about her, her Mother and younger sister and lies that were told. She basically told Father "not to show up for visitation on tomorrow as she was not comfortable around him and that "if u do show up then I would be happy to share and send information that i found with everyone there."

Redacted ...

Redacted...

Redacted

**CASE # 2020 DR 26 1440 - COLLEGE EXPENSE ACTION**

The Mother filed an action seeking to have Father contribute towards Haley Kathryn's college expenses on July 30, 2020. The temporary hearing was scheduled before me on September 25, 2020. After reviewing the pleadings, motion, return and the parties' affidavits, I denied the payment of college expenses on a temporary basis finding that each college expense case is fact specific. The funds for college were available for Haley Kathryn's benefit. The Father and Haley Kathryn engaged in discussions with respect to the payment of college expenses and that Haley Kathryn was not a party to the action. Nor was an affidavit submitted on her behalf. I held the requests for attorney fees in abeyance and denied Father's request to dismiss the action as it was not properly before the Court. **See Exhibit L.**

The final hearing in this matter was scheduled before me on November 2, 2021. I denied Mother's request to order Father to contribute towards Haley Kathryn's college expenses for a myriad of reasons as stated in the Final Order dated March 4, 2022 and filed March 9, 2022. **See Exhibit M**

1. The Mother and Father's Divorce Settlement Agreement addressed Father fully funding the South Carolina College Tuition Prepaid Program. Thus, college-related expenses were addressed in the parties Equitable Distribution Settlement of which is final and not subject to modification.

2. Haley Kathryn and Father's relationship was strained. The Court order states that she has "posted some of the most vile and despicable comments about her Father that the Court has ever seen on social media. **See Exhibit N.**
3. Risinger vs. Risinger factors as well as McLeod vs. Starnes are distinguishable from the case at hand.
4. I was concerned that Mother involved Haley Kathryn in her efforts to extract as much money from Father as possible. Thus, even if I had not determined that Father's obligation to Mother was limited by virtue of the parties' agreement, Mother had to some extent sabotaged her own request by involving Haley Kathryn in a conspiracy to have Father financially responsible for the "highest level of need possible for your dad to be responsible for". **See Exhibit O**
5. I dismissed the Mother's complaint with prejudice.
6. I further found that there was no way that I could address the financial needs of the adult children, or even determine if they would be entitled to a contribution towards their college expenses from their Father without their presence as parties. Mother failed to add them as parties and have them testify as witnesses.
7. I ordered that the adult children could pursue an action against their Father, if they choose to do so.

It is important to note that Paragraph 24 of the order states "although this Court has previously determined that Plaintiff (Mother) has engaged in alienation tactics, that is not the issue in this instance, as regardless of Plaintiff's (Mother) alleged contribution to the estrangement between Father and Daughter, the child (Haley Kathryn) has expressed pure hatred of Defendant (Father) as well as of those whom she believes have assisted Defendant (Father) in some way. **See Exhibit P** an Instagram post of Haley Kathryn which states **F--K JUDGE JAN HOLMES AND ANITA FLOYD YALL BOTH DDESRRVE to burn in hell just as much u corrupted pieces of s--t. I hate evrryone so much f--k horry county.**" I have not included the full curse words in this quote, however a review of the exhibit will show the entire post.



The Mother did not appeal the Order of the Court dismissing her action requesting Father to contribute towards the adult children's college expenses. As of today, I have not located a case (pending or closed) in Horry County filed by the adult daughters requesting a contribution from Father for payment towards college-expenses.

**RULING OF THE COURT OF APPEALS WITH RESPECT TO RULE TO SHOW CAUSE HEARD DECEMBER 10, 11 AND 14, 2018 AND MAY 22-23, 2019 HORRY CASE # 2014-DR-26-1563.**

On January 17, 2024 in an unpublished opinion, the Court of Appeals states in summary that "Michelle Davis Capps (Wife) appeals the family court's order in this rule-to show cause arising out of her divorce from Joseph Harold Capps, Jr. (Husband). Wife maintains the family court erred in finding she violated its order by harassing Husband and alienating him from the parties' two daughters. Wife further maintains the family court erred in awarding Husband's attorney's fees. Finally, Wife appeals the order of this court remanding the matter for a reconstruction of the record as to a portion of the transcript from the rule to show cause that was lost. We affirm in part and reverse in part. See **Exhibit Q**. I will only include the ruling of the Court of Appeals as it relates to the allegations made against me by Michelle Davis Capps, Haley Kathryn Capps and Emily Capps as follows:

- 1. As to this court's order remanding the matter to the Family Court for reconstruction of the record, we affirm..... Here, the record demonstrates the family court had made copious notes regarding pertinent testimony at the rule to show cause hearing. Wife offered no affidavits at the reconstruction hearing and only sought to add a few pieces of information about Husband's cross-examination that do not appear to have been particularly beneficial to her. Further, the trial exhibits included in the record on appeal aid in developing a fuller picture of the state of affairs between the parties. Based on all the circumstances, we are able to conduct a meaningful review, and Wife has not demonstrated the reconstruction prejudiced her.**

2. Regarding the family court's determination Wife denigrated Husband to the parties' children, we find Husband established a violation of the family court's order by clear and convincing evidence...We find the testimony, texts, and audio recording of Husband and Wife's confrontation regarding one daughter's recording Husband provides clear and convincing evidence Wife discussed inappropriate topics in front of the parties' daughters and encouraged the daughters' lack of respect toward their father. Furthermore, the family court observed Wife's testimony at this rule to show cause hearing, as well as a prior rule to show cause hearing and found Wife not to be credible. Consequently, we affirm the family court as to its finding of contempt on this point.

**RESPONSE TO COMPLAINT OF HALEY KATHRYN CAPPS AND EMILY CAPPS  
AS TO MY ALLEGED CONDUCT ON DECEMBER 14, 2018. THIS ALSO SERVES AS  
MY RESPONSE TO MICHELLE DAVIS CAPPS ALLEGATION OF MY CONDUCT ON  
SAID DATE AS WELL**

I deny that I ordered the grandmother of the children to take them out of school and bring them to court so that they could observe me sentencing 2 juveniles in DJJ proceedings where the juveniles were handcuffed and shackled. I did not disparage them nor did I make unfounded slanderous statements regarding their lives and their character. Furthermore, I did not have the solicitor threaten that if they did not go to visitation with their Father that they would be considered runaways and placed in DJJ.

This was the 2<sup>nd</sup> Rule to Show Cause hearing of which I presided where the Mother was alleged to have alienated the children from their Father and encouraged their disrespect of him. The case was scheduled for trial on December 10 and 11, 2018. There was insufficient time on those two days for the Court to complete Father's testimony. I was scheduled to hear Juvenile Delinquency Proceedings on Friday, December 14, 2018. I allotted a few hours from Juvenile Delinquency proceedings time to this Rule to Show Cause to finish Father's cross-examination and re-direct testimony. Upon completion of the Father's testimony, the Court was concerned that the children were not visiting with Father and desired to address the matter with the parties and the children on the record. I attach the Transcript of Record from the December 14, 2018 hearing which consists of 56 pages as **Exhibit R**.

At the top of Page 45, I state that **"I need the courtroom cleared. I'm done with testimony but the parties are not excused. I will be bringing the parties back in. I'm going to give the parties specific instructions as to what I expect to occur for visitation from here on out moving forward. I am also going to talk to the Juvenile Prosecutor as well as the Department of Juvenile Justice. They are on my docket today and I will call the parties back in when I need them to come back in. I need**

**the attorneys for the parties also in chambers at this time. Let Ms. Fox know that I need to see her along with the Department of Juvenile Justice in chambers."**

I met with the Juvenile Solicitor, DJJ, Anita Floyd Lee (Father's attorney) and Juliaan Derrick (Mother's attorney), in chambers to determine how much time the Solicitor needed on my docket for the remainder of the day so that I could then set a time for the parties, their attorneys and the children to return to Court for my instructions on visitation going forward. I instructed Mother's attorney to have maternal grandmother bring the children to Court so that they hear the instructions with respect to visitation directly from me.

I proceeded with the Juvenile Docket. I had no idea or knowledge that children would be handcuffed and placed in DJJ custody in the presence of the Capps' children because I anticipated that I would be done with the Juvenile docket by the time the Capps case was called to re-appear before me so that I give instructions with respect to visitation going forward. Usually there is a Baliff/Deputy at the door that monitors admission. I'm just not sure what happened or whether the deputy at the door allowed them in believing that they were supposed to be there for juvenile proceedings, or whether the children just walked in the courtroom because there was no deputy at the door to prevent them from doing so. However, the Court sentencing/committing juveniles to DJJ custody was not a planned observation for the Capps' children. Again, I had no knowledge of the outcome of any of the juvenile cases on my docket for that day nor did I know that the Capps' children would gain admission to the courtroom during the juvenile proceedings to witness what they saw.

The Capps women attempt to create doubt in reasonable persons' mind as to what transpired in court on December 14, 2018 and other dates that were referenced. There were no issues with any other Court dates nor any other court reporter records being lost other than the specified dates of December 10 and 11, 2018. Pages 45 to 56 of the transcript contains the entire record of what transpired in Court on December 14, 2018 when the Capps children were present. There is absolutely nothing in the record that reflects any slanderous statements made by me or the Juvenile Solicitor. Nothing in the record reflects any inappropriate behavior or violations of the following Canons: Canon 1-A Judge Shall Uphold the Integrity and Independence of the Judiciary.

Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

(2) A judge shall be faithful to the law\* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism. (3) A judge shall require order and decorum in proceedings before the judge. (4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control. (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice. (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law\* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel\* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law\* to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary: In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.

Furthermore, I have not violated S.C. Code § 63-5-80. Cruelty to children.

Whoever cruelly ill-treats, deprives of necessary sustenance or shelter, or inflicts unnecessary pain or suffering upon a child or causes the same to be done, whether the person is the parent or guardian or has charge or custody of the child, for every offense, is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days or fined not more than two hundred dollars, at the discretion of the magistrate.

In reviewing the court files in preparing my response to the Complaint, I discovered two letters from the attorneys involved in this matter that references many events, but I reference their account of what happened in court on December 14, 2018. Julaan Derrick, Mother's attorney states to Anita Floyd Lee in a letter dated April 9, 2019 on Page 2 referring to Father "and testified how disrespectful his children were to the point they had to leave school and appear in court." In referring to the Capps' children counselor "I know from his conversation with you and I that he thinks the girls are extremely 'manipulative' and I believe he said the worse he had seen". On page 3 referring to Father "the girls got

drug into court and lectured about being respectful based on him talking about how bad they are." See **Exhibit S**.

Anita Floyd Lee responds to Julaan Derrick's letter in a letter dated May 20, 2019. See **Exhibit T**

**Paragraph #3 Children's Appearance in Court:** "The children were in court based upon Michelle's actions, not my client's actions. My client never told the children that they did not have to go visitations, nor has he ever told them that they were entitled to cars and out of state colleges merely because he earned a good living. He certainly has not told them that it is OK to record him, or to try and confiscate his financial documents and send them to Michelle. Your client may not have wanted these facts to come out at trial, but her teaching them to be disrespectful, and then embracing their disrespect, created an untenable situation. As should be noted, after the court intervened, my client's visitation resumed.

Unfortunately, my client's visitation has become more difficult the closer we have come to the conclusion of this Rule. Apparently, *someone* has allowed the children to believe that my client is the reason they were in court, when Michelle knows very well that is not the case. If anything, Michelle refusing to embrace the court order is what empowered the children to believe they did not have to do anything they did not want to do, and the court determined that Michelle's attitude was inappropriate. Otherwise, there would have been no reason for Judge Holmes to have made the decision she did".

*Redacted*

To further support my position that the Capps children were not slandered in court and threatened with a runaway charge on December 14, 2018, I reference Judge Melissa Buckhannon statements in her order of August 8, 2019 already submitted as **Exhibit J**.

Redacted

You will note that the transcript does not reflect Haley Kathryn's, Emily's or Michelle Davis Capps' account of why the children were in court and their version of what happened on December 14, 2018 because they are simply not telling the truth, I have found Michelle Davis Capps to not be credible in two Rule to Show Cause actions. The Court of Appeals has affirmed me. I have also found that Michelle Davis Capps has alienated the children from Father and encouraged them to disrespect their Father. The Court of Appeals on January 17, 2024 ruled **"regarding the family court's determination Wife denigrated Husband to the parties' children, we find Husband established a violation of the family court's order by clear and convincing evidence...We find the testimony, texts, and audio recording of Husband and Wife's confrontation regarding one daughter's recording Husband provides clear and convincing evidence Wife discussed inappropriate topics in front of the parties' daughters and encouraged the daughters' lack of respect toward their father. Furthermore, the family court observed Wife's testimony at this rule to show cause hearing, as well as a prior rule to show cause hearing and found Wife not to be credible. Consequently, we affirm the family court as to its finding of contempt on this point.**



I denied Michelle Davis Capps' request to order Father to pay towards Haley Kathryn college expenses and costs with prejudice due to her conspiring with Haley Kathryn to have Father financially responsible for the "highest level of need possible for your dad to be responsible for" among various other reasons stated in the detailed order. **See Exhibit O.**

*Redacted*

I have provided overwhelming documents to substantiate why these young ladies and their Mother, Michelle Davis Capps would falsely allege misconduct by me. They simply despise me. Now almost 6 years later they allege that they were intentionally victimized by my actions. Their allegations against me are not true. I also include for your review the Instagram post of Haley Kathryn Capps as **Exhibit P** where she states "**F--K JUDGE JAN HOLMES AND ANITA FLOYD YALL BOTH DDESRRVE to burn in hell just as much u corrupted pieces of s—t. i hate evrryone so much f--k horry county.**" Please note that I didn't spell out curse words. However, a review of the actual document will reveal what was posted.

The complaint of Haley Kathryn Capps, Emily Capps and Michelle Davis Capps with respect to my actions in Court on December 14, 2018 is without truth or veracity. I respectfully request upon review that it be dismissed by the Judicial Merit Selection Commission. I have at all times complied with the Code of Judicial Conduct in its entirety and have never engaged in cruelty to children.

## RESPONSE TO COMPLAINTS OF MICHELLE DAVIS CAPPS

### Part One: Judicial Issues during the 2017 Rule to Show Cause

I deny that I allowed any attorney or party to waste the court's time or provide slanderous statements, displayed bias or impropriety during the Rule to Show Cause hearing held on January 30, 31, 2017 and February 1, 2017. After two and a half days of testimony, the parties informed the Court that they had reached an agreement. I previously referenced the order of the Court from this hearing as **Exhibit A**. I note that Ms. Capps has not submitted the entire transcript for the hearing held on the above-referenced dates. This appears to be an attempt to re-litigate issues of which the parties resolved by agreement.

I deny that I violated the Judicial Canons as listed below:

Canon 1 - A Judge Shall Uphold the Integrity and Independence of the Judiciary.

Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

Canon 3-(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary: In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases so as to reduce or eliminate dilatory practices, avoidable delays and unnecessary costs.

### Former Senator Ray Cleary

I deny that I have or had a relationship with Former Senator Ray Cleary that required me to disclose same or recuse myself from hearing any matters in which he was a witness or a party. I'm under the impression that Former Senator Cleary's tenure in the Senate ended in or about 2016. At the time that he testified as a witness in the Rule to Show Cause hearing in 2017, he was no longer a member of the South Carolina Senate.

All other statements made concerning me contacting Senator Cleary prior to my judgeship are false. Furthermore, it is my recollection that Former Senator Yancey McGill was my Senator at the time of my election.

Redacted

This claim with respect to Former Senator Ray Cleary in its entirety lacks truth and veracity.

**Part Two : Judicial Issues during the 2018 RTSC as well as Judicial Issues with the Statement to Recreate the Record on September 25, 2020**

The transcript for the court days of December 10 and 11 are the only days that were not in existence due to the court reporter assigned on those days retiring and the recording from those days were not able to be transcribed. Hence, I was ordered by the Court of Appeals to re-create the record. I did so on September 25, 2020. I note that Ms. Capps states in her claim that she could not find anyone in the courtroom that saw me taking notes and that it is preposterous to think that I could do so from two full days of testimony, cross and redirecting. She states that my re-creating the record to support my ruling creates an appearance of impropriety and bias. The Court of Appeals affirmed my re-creation of the record due to my copious note taking and the overwhelming exhibits entered into evidence. Please reference the SC Court of Appeals decision wherein the ruling reflects in paragraph 1 already attached as Exhibit Q:

**As to this court's order remanding the matter to the Family Court for reconstruction of the record, we affirm..... Here, the record demonstrates the family court had made copious notes regarding pertinent testimony at the rule to show cause hearing. Wife offered no affidavits at the reconstruction hearing and only sought to add a few pieces of information about Husband's cross-examination that do not appear to have been particularly beneficial to her. Further, the trial exhibits included in the record on appeal aid in developing a fuller picture of the state of affairs between the parties. Based on all the circumstances, we are able to conduct a meaningful review, and Wife has not demonstrated the reconstruction prejudiced her.**

As an aside, I have never been tasked with re-creating a record so I am particularly proud of being affirmed based on my copious note taking.

I have always faithfully and diligently complied with the following Judicial Canons during this hearing and all hearings of which I presided:

Canon 1 - A Judge Shall Uphold the Integrity and Independence of the Judiciary.

Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

(2) A judge shall be faithful to the law\* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall require order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law\* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel\* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law\* to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

Commentary: In disposing of matters promptly, efficiently and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay.

(9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.

Furthermore, I deny that I engaged in ex parte communication as alleged by Michelle Davis Capps.

#### **Judicial Issues during the hearing on December 14, 2018**

Please reference my response to my alleged inappropriate behavior with respect to Haley Kathryn and Emily's Complaint on December 14, 2018. My response is the same with respect to Michelle Davis Capps' account of what transpired in court on this date.

**Judicial Issues during the hearings on May 22, 2019 and May 23, 2019**

**Judicial Issues from the Ruling on June 14, 2019**

I have at all times complied with the below referenced Judicial Canons:

Canon 1 - A Judge Shall Uphold the Integrity and Independence of the Judiciary.

Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently. (2) A judge shall be faithful to the law\* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism. (4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control. (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice. (9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.

I deny that I engaged in any inappropriate behavior during the hearing held on May 22, 2019 and May 23, 2019. I further deny that I engaged in any inappropriate behavior while issuing my ruling on the record on June 14, 2019 from the trial dates of December 10, 11 and 14, 2018 and May 22-23, 2019.

**Part 3: Judicial Issues with the March 9, 2020 Motion to Compel**

I have at all times complied with the below referenced Judicial Canons:

Canon 1 - A Judge Shall Uphold the Integrity and Independence of the Judiciary.

Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities.

Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

(2) A judge shall be faithful to the law\* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism. (4) A

judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control. (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice. (9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.

I deny that I have shown bias, lack of ethics and impropriety by not requiring Mr. Capps to file a Financial Declaration pursuant to Rule 20 of the South Carolina Family Court Rules. I did not find that the financial condition of Mr. Capps was relevant to the issue of custody where child support was waived. My order speaks for itself. Furthermore,

Redacted



**Part 4: Issues with the June 22, 2020 Ex Parte Order Judge Holmes signed**

The Ex Parte Order was properly issued by me in accordance with Judicial Canon 3 (7). Upon review of the properly executed Affidavit of Plaintiff in Support of Rule to Show Cause with attached letters between Anita Floyd Lee and Julaan Derrick of which requested Michelle Davis Capps to comply with the order and return Emily to Father otherwise Father would seek relief from the Court, Motion and Support of Rule to Show Cause, Order and Rule to Show Cause, Motion Form, the Order of which Michelle Davis Capps was alleged to be in violation of by refusing to return the child to Father's home, the Court issued the Ex Parte Order granting Mr. Capps custody of Emily immediately. A hearing concerning same was scheduled on July 6, 2020 before Judge Norton, however was continued by agreement of the attorneys. Julaan Derrick was served with all of the paperwork as reflected in **Exhibit V**. Michelle Davis Capps is being dishonest by stating that she was not served the documents. I attach the Myrtle Beach Process Server, LLC Affidavit of Service indicating that she was served. **See Exhibit W**

I have at all times complied with Judicial Canon 1 - A Judge Shall Uphold the Integrity and Independence of the Judiciary. Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities. Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently. (2) A judge shall be faithful to the law\* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism. (3) A judge shall require order and decorum in proceedings before the judge. (4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control. (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice. (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte

communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may obtain the advice of a disinterested expert on the law\* applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(c) A judge may consult with court personnel\* whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may initiate or consider any ex parte communications when expressly authorized by law\* to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently and fairly.

**Judicial Issues with 2<sup>nd</sup> Temporary Hearing on August 12, 2020 being continued.**

I have at all times complied with the below referenced Canons while communicating with all parties with respect to the August 12, 2020 hearing being continued. I attach for your reference all correspondence with respect to said hearing of which was not provided to you by Michelle Davis Capps. **See Exhibit X.** You will note that all parties are involved in all email communications. I also attach as **Exhibit Y**, the order continuing the August 12, 2020 hearing entitled "Order Based on Defendant's

Motion Filed July 2, 2020. There was absolutely no Ex Parte communication with Anita Floyd Lee at any given time.

I have at all times complied with Canon 1 - A Judge Shall Uphold the Integrity and Independence of the Judiciary. Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities. Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently. (2) A judge shall be faithful to the law\* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism. (4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control. (5) A judge shall perform judicial duties without bias or prejudice and (9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.

## **Part 6: Judicial Issues with Motion for College Support Being Dismissed**

The Mother filed an action seeking to have Father contribute towards Haley Kathryn's college expenses on July 30, 2020. The temporary hearing was scheduled before me on September 25, 2020. After reviewing the pleadings, motion, return and the parties' affidavits, I denied the payment of college expenses on a temporary basis finding that each college expense case is fact specific. The funds for college were available for Haley Kathryn's benefit. The Father and Haley Kathryn engaged in discussions with respect to the payment of college expenses. The fact that Haley Kathryn was not a party to the action was an issue as she was not subjected to cross-examination. Nor was an affidavit submitted on her behalf. I held the requests for attorney fees in abeyance and denied Father's request to dismiss the action as it was not properly before the Court. **See Exhibit L.**

The final hearing in this matter was scheduled before me on November 2, 2021. I denied Mother's request to order Father to contribute towards Haley Kathryn's college expenses for a myriad of reasons as stated in the Order. **See Exhibit M** as follows:

1. The Mother and Father's Divorce Settlement Agreement addressed Father fully funding the South Carolina College Tuition Prepaid Program. Thus, college-related expenses were addressed in the parties' Equitable Distribution Settlement of which is final and not subject to modification.
2. Haley Kathryn and Father's relationship was strained. The Court order states that she has "posted some of the most vile and despicable comments about her Father that the Court has ever seen on social media". See attached **Exhibit N**.
3. Risinger vs. Risinger factors as well as McLeod vs. Starnes are distinguishable from the case at hand.
4. I was concerned that the Mother involved Haley Kathryn in her efforts to extract as much money from Father as possible. Thus, even if I had not determined that Father's obligation to Mother was limited by virtue of the parties' agreement, Mother had to some extent sabotaged her own request by involving Haley Kathryn in a conspiracy to have

Father financially responsible for the "highest level of need possible for your dad to be responsible for". **See Exhibit O**

5. I dismissed the Mother's complaint with prejudice.

6. I further found that there was no way that I could address the financial needs of the adult children, or even determine if they would be entitled to a contribution towards their college expenses from their Father without their presence as parties. Mother failed to add them as parties or have them testify as witnesses.

7. I ordered that the adult children could pursue an action against their Father, if they choose to do so.

It is important to note that Paragraph 24 of the order states "although this Court has previously determined that Plaintiff (Mother) has engaged in alienation tactics, that is not the issue in this instance, as regardless of Plaintiff's (Mother) alleged contribution to the estrangement between Father and Daughter, the child (Haley Kathryn) has expressed pure hatred of Defendant (Father) as well as of those whom she believes have assisted Defendant (Father) in some way". See attached **Exhibit P**

Michelle Davis Capps did not appeal the Order of the Court dismissing her action requesting Father to contribute towards the adult children college expenses. As of today, I have not located a case (pending or final) in Horry County filed by the adult daughters requesting a contribution from Father for payment towards college-expenses.

Michelle Davis Capps further alleges that I should have recused myself from hearing the college expense case because she was in an active appeal against me. Ms. Capps was represented by Greg Forman, Esquire in this matter. Neither Mr. Forman or Ms. Capps requested my recusal. If they had done so, I would have merrily granted the request.

The additional allegations made against me is an attempt to re-litigate this matter. Throughout my 17+ years career as a Family Court Judge, I have upheld the law as well as complied with the Code of Judicial Conduct. I maintain ethical standards, exude

professional responsibility and competence. I have been patient, kind, dignified and courteous to litigants, lawyers, witnesses and children of whom I had come into contact.

I have at all times complied with Canon 1 - A Judge Shall Uphold the Integrity and Independence of the Judiciary. Canon 2 - A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities. Canon 3 - A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently. (2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism. (4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control. (5) A judge shall perform judicial duties without bias or prejudice and (9) A judge shall not, while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.

**D. Disciplinary Responsibilities.** (2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct contained in Rule 407, SCACR, should take appropriate action. A judge having knowledge\* that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

I have not witnessed any conduct performed or exhibited by Anita Floyd Lee that requires me under the Rules of Professional Conduct Rule 407, SCACR to report her to the appropriate authorities.

**E. Disqualification**

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:  
a) the judge has a personal bias or prejudice concerning a party or party's lawyer.

I do not have a personal bias or prejudice for or towards any party or lawyer involved in this matter. I have not colluded with Anita Floyd Lee in this matter or any other matter. The parties were all represented by lawyers whom I have ruled in favor of or against depending on the credible facts and circumstances of the case.

Thank you for the time and consideration given to my response and supporting documents. I respectfully request that the complaints filed by Michelle Davis Capps, Haley Kathryn Capps and Emily Capps be dismissed with prejudice.

Sincerely,



Jan B. Bromell-Holmes

:JBBH

Note:

EXHIBITS F, G, H, I, J, K, R, S, T, U, V, W, X, and Y are not included due to confidentiality.

EXHIBITS P and N are not included due to sensitive material.

Exhibit A

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
Michelle Davis Capps, )  
Plaintiff, )  
-vs- )  
Joseph Harold Capps, )  
Defendant. )

IN THE FAMILY COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
Case Number: 2014-DR-26-1563

**ORDER BASED UPON  
RULE TO SHOW CAUSE**

**HEARING JUDGE:**  
**HEARING DATE:**  
**PLAINTIFF'S ATTORNEY:**  
**DEFENDANT'S ATTORNEY:**  
**COURT REPORTER:**

**The Honorable Jan Bromell-Holmes**  
**January 30, 31, 2017**  
**February 1, 2017**  
**Mary Madison Brittain Langway**  
**Anita F. Lee**  
**H. Eugene Buckner**

FILED  
HORRY COUNTY  
2017 APR 1 PM 4:45  
CLERK OF COURT  
HORRY COUNTY

On June 25, 2014, Plaintiff and Defendant entered into a Custody Agreement which was approved by this Honorable Court on July 14, 2014. Thereafter, on October 3, 2014, the parties were divorced from one another. Unfortunately, although the marriage ended, the strife between the parties did not, as within months of having their Custody Agreement approved, one or both parties were expressing discontent over the conduct of the other.

On February 10, 2015, Defendant sent to Plaintiff a letter indicating that if she would attend counseling, and if she would cooperate with Defendant's efforts to attend counseling with the children, he would not request a Rule to Show Cause hearing. Thereafter, the parties attended counseling with Hal Heidt, and Defendant also attended counseling with the parties' oldest child. Defendant alleges that, after only a few months, Plaintiff ceased this counseling, though she located another counselor for herself and the children. Despite Defendant's protestations regarding Plaintiff's decision to withdraw from counseling with Hal Heidt, as well as his objection to the counselor whom Plaintiff selected for the children, Plaintiff would not reconsider her decision.

Thereafter, on May 6, 2016, Defendant filed a Rule to Show Cause Petition, wherein he sought an order holding Plaintiff in contempt of court as well as corresponding sanctions. The basis of Defendant's Petition is as follows:

- 1. That Plaintiff did not comply with the final order in regards to the division of personal property, in that she removed the vast majority of furniture and other

QBH

ORIGINAL [Signature]



- furnishings when she vacated the residence, as a result of which Defendant sought an equalization amount of \$8,000;
2. That Plaintiff did not pay the rent that was due Defendant when she remained in the home after September 1, 2014, as a result of which Defendant sought past-due rental of \$9,916.67;
  3. That Plaintiff willfully and deliberately alienated the children from him, as a result of which Defendant sought the following:
    - a. That Plaintiff be fined and/or imprisoned and/or subjected to community service hours;
    - b. That this Honorable Court declare that Defendant is entitled to visitation during spring break of 2017, as well as all odd-numbered years thereafter;
    - c. That Plaintiff be required to immediately remove the children from counseling with Harold Brown;
    - d. That Defendant be relieved of any obligation to pay for any counseling services provided by Harold Brown;
    - e. That Plaintiff be required to reimburse Defendant for an elective medical procedure Plaintiff had performed on the parties' oldest child, in the amount of \$582.00;
    - f. That Plaintiff be required to get counseling to address her alienation tactics; and
    - g. That Plaintiff be required to reimburse Defendant the attorney's fees and costs which he incurred in this matter.

The hearing was originally scheduled for July 28, 2016, and Plaintiff was served with the Petition as well as the resulting Order and Rule to Show Cause on May 10, 2016. Thereafter, on July 19, 2016, Plaintiff obtained a Rule to Show Cause against Defendant, wherein she sought an order holding Defendant in contempt of court as well as corresponding sanctions. The basis of Plaintiff's Petition is as follows:

1. That Defendant had not listed the former marital residence for sale as is required, as a result of which she sought an order requiring Defendant to immediately place that property on the market for sale;

*[Handwritten Signature]*

2. That Defendant had frustrated her plans with the children during spring break vacation of 2016, as a result of which Plaintiff sought an order allowing her to have the children with her during the spring break vacation of 2017;
3. That Defendant had not paid her the full amount of alimony that she was due in July, 2014, as well as August, 2014;
4. That Defendant had allowed the parties' youngest child to have unsupervised access to his phone while on vacation in the Dominican Republic, during which time she posted objectionable pictures on *snapchat*, or other social media;
5. That Defendant had, by allowing the children to see an affidavit he had prepared for a friend who was involved in domestic litigation, discussed the litigation between the parties with the children; and
6. That Defendant has kept a loaded gun in his bedside table where the children have access, as a result of which she sought an order requiring Defendant to keep any and all guns locked up and out of the reach of the youngest child.

The parties agreed that their Rules to Show Cause should be combined, and then resolved after one hearing which addressed both parties' concerns. Thus, the amount of time which Defendant had requested was insufficient and the hearing had to be rescheduled. On August 8, 2016, an order of continuance was filed, and thereafter this hearing date was established.

The hearing commenced on January 30, 2016, and after 2 ½ days of testimony, the parties announced to the court that they had reached a full and final settlement of the issues. Defendant then announced the parties' agreement, as follows:

1. **Custody:** The parties will have joint custody of their children, with Plaintiff being designated the primary custodial parent. In addition to the visitation that is set forth in the parties' agreement dated June 25, 2014, Defendant shall be entitled to the following:
  - a. Every Monday, Defendant will be responsible for taking the children to school, and picking them up from school. He may participate in a carpool situation, or he may personally transport the children, at his pleasure.

*CAPP*

- b. Every Tuesday morning and every Friday morning, Defendant shall take the children to school. He may participate in a carpool situation, or he may personally transport the children, at his pleasure;
  - c. One evening per week, Defendant shall take the children to dinner, or otherwise have dinner with them. The time for this visitation shall be 6:00PM-8:30PM.
  - d. NOTE: what is set forth in subparagraphs "a" - "c", above shall be in addition to the visitation that was agreed upon in the parties' Custody Agreement that is dated June 25, 2014.
2. **Communication:** Defendant shall be allowed to communicate with the children by way of cell phones from 7:00AM - 9:30PM daily.
  3. **Spring Break, 2017:** Defendant shall have the children in his possession Spring Break of 2017 (and all odd-numbered years thereafter).
  4. **Harold Brown:** The children shall not see Harold Brown again for counseling or otherwise.
  5. **Counseling:** Within the next 15 days, Plaintiff must have an appointment with a counselor (not Harold Brown) to address the issue of her alienating the children from Defendant. Hal Heidt, with whom Defendant is counseling, shall communicate with Plaintiff's counselor, and they shall work together to address the alienation issues. Further, the two counselors shall recommend 3-4 names of counselors for the children to see. These names shall be submitted to The Honorable Jan Bromell-Holmes, who shall select the counselor for the children from this list.
  6. **Counseling:** The children shall be in counseling within the next 30 days.
  7. **Restraining Order:** The parties shall be absolutely prohibited, forbidden, restrained and enjoined from hurting, harming, harassing, molesting, abusing or bothering one another. All communication shall be peaceful and nonthreatening in nature.
  8. **Restraining Order:** The parties shall be absolutely prohibited, forbidden, restrained and enjoined from discussing this litigation with the children, from



denigrating the other parent to or in the presence of the children, from allowing any third party to denigrate a parent to or in the presence of the children.

9. **Reimbursement:** Plaintiff shall reimburse Defendant the sum of \$20,000, which amount shall encompass all reimbursements Defendant had requested in his Rule to Show Cause Petition. Toward satisfaction of this amount, \$1,000 shall be withheld from Plaintiff's alimony for 20 consecutive months, commencing March 1, 2017 (from March, 2017 – October, 2018, inclusive Plaintiff's alimony shall be reduced by \$1,000).

After the agreement had been published, I inquired of the parties regarding their understanding of same, and I am convinced that they entered into the agreement after careful consideration and based upon the advice of competent counsel who are well-known to this court. Accordingly, based upon the terms of the above-recited Agreement, together with the testimony of the parties, I make the following Findings of Salient Fact:

#### FINDINGS OF FACT

##### *Jurisdiction*

1. I find that the parties are citizens and residents of the State of South Carolina, County of Horry, and that they have been for many years. They are formerly Husband and Wife, having been divorced from one another by Final Order that was filed October 3, 2014. Prior to the divorce hearing, the parties had entered into a Marital Settlement Agreement as well as a Custody Agreement, and those Agreements were approved by this Honorable Court, with the terms of said agreements being merged, adopted and incorporated into a final order which was filed with this court on July 22, 2014.
2. The parties are before the court based upon Rules to Show Cause which each has filed against the other, and I find that this Court has jurisdiction and continuing jurisdiction of the parties as well as the subject matter before it.

*[Handwritten Signature]*

**Agreement**

3. I find that the parties freely, knowingly and voluntarily agreed for this Court to review, approve and adopt as its order, their agreement which is recited herein above. The Court favors settlements and agreements among litigants, and it regards as commendable efforts by parties to settle their differences without the Court's intervention or assistance. Drawdy vs. Drawdy, 275 S.C. 776, 268 S.E. 2d 30 (1980). Whenever parties settle their differences by agreement and then submit said agreement to the Court for its approval, the Court must satisfy itself that the agreement has been entered into freely, voluntarily and reasonably. Mosely vs. Mosier, 279 S.C. 348, 306 S.E. 2nd 624 (1983). This Court finds that the parties' Agreement is, in fact, fair, equitable and reasonable; that the parties entered into their agreement voluntarily and with full understanding of their rights and duties; that there was financial disclosure between the parties during the negotiation of their Agreement; and that both parties believe the agreement to be in their overall best interest as well as in the children's overall best interest.
4. Based upon the foregoing, I find that the parties' Agreement should be approved by this Court, and that the terms of said Agreement should be merged, adopted and incorporated into this Court's Final Order, the same as if set forth verbatim herein. Accordingly, the parties' Agreement will be enforced as any other Family Court Order, and the parties will be subject to the inherent contempt powers of this Court in the event either should violate any of the terms of this agreement.

Based upon the above-recited Findings of Fact, I make the following

Conclusions of Law:



**CONCLUSIONS OF LAW**

The General Assembly has previously vested with the Family Courts of this State the exclusive jurisdiction to hear and determine matters related to the termination of marriages, and to enforce their Orders through contempt powers, pursuant to Title 20 of the South Carolina Code of Laws, 1976, as amended. Therefore, it is

**ORDERED**, that the above recited agreement of the parties is hereby approved by this Court; and its terms are merged, adopted and incorporated herein the same as if set forth verbatim; and it is further,

**ORDERED**, that the above recited agreement of the parties, shall be enforceable as any other Family Court Order and binding upon them.

**IT IS SO ORDERED**, this 20<sup>th</sup> day of March, 2017, at Georgetown, South Carolina.

Jan B. Holmes  
The Honorable Jan Bromell-Holmes  
Resident Judge for the Family Court  
Fifteenth Judicial Circuit

**NOTICE TO ALL PARTIES: A VIOLATION OF THIS ORDER, WHICH IS DETERMINED TO BE A WILLFUL VIOLATION, MAY RESULT IN A FINDING OF CONTEMPT AND CORRESPONDING SANCTIONS SHALL THEN INCLUDE UP TO ONE YEAR'S IMPRISONMENT, A FINE OF UP TO \$1,500.00, UP TO 300 HOURS OF COMMUNITY SERVICE, OR A COMBINATION OF SOME OR ALL OF THESE PENALTIES. BE SO NOTIFIED!!**

Exhibit B

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
Michelle Davis Capps, )  
Plaintiff, )  
-vs- )  
Joseph Harold Capps, )  
Defendant. )

IN THE FAMILY COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
Case Number: 2014-DR-26-1563

ORDER OF CONTINUANCE

HORRY COUNTY  
2018 APR 20 AM 11:12  
CLERK OF COURSE  
HORRY COUNTY

On January 8, 2018, Defendant filed a Rule to Show Cause against Plaintiff, alleging that Plaintiff has violated, or continued to violate, various terms and provisions of that certain Final Order which was filed with this Honorable Court on about July 22, 2014. After the hearing date was established, Plaintiff was served with the Rule to Show Cause as well as the Notice of Hearing Date. She thereafter retained Julaan Derrick.

Plaintiff's counsel has requested a continuance in this matter, and as she was not involved when the hearing date was established, Defendant has agreed to continue this matter as to accommodate the schedule of Plaintiff's new counsel.

Accordingly, upon good cause shown, Defendant's Rule to Show Cause that is currently scheduled for May 1 and 2, 2018, shall be continued from that date, and shall be rescheduled to another date that is convenient to both parties.

Therefore, it is

**ORDERED**, that the hearing scheduled for May 1 and 2, 2018, is hereby continued and will be rescheduled as soon as is possible.

**IT IS SO ORDERED** this 17 day of April, 2018 at Conway, SC.

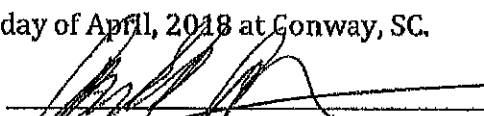
  
The Honorable Ronald R. Norton  
Resident Judge for the Family Court  
Fifteenth Judicial Circuit

Exhibit C

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )  
Michelle Davis Capps, )  
                                  *Plaintiff,* )  
-vs- )  
Joseph Harold Capps, )  
                                  *Defendant.* )

IN THE FAMILY COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
Case Number: 2014-DR-26-1563

**ORDER OF CONTINUANCE**

On January 8, 2018, Defendant filed a Rule to Show Cause against Plaintiff, alleging that Plaintiff has violated, or continued to violate, various terms and provisions of that certain Final Order which was filed with this Honorable Court on about July 22, 2014. After the hearing date was established, Plaintiff was served with the Rule to Show Cause as well as the Notice of Hearing Date. She thereafter retained Juliaan-Derrick.

On September 10, 2018, Defendant requested a continuance due to impending inclement weather (Hurricane Florence), and Plaintiff agreed that this matter should be continued. Accordingly, upon good cause shown, Defendant's Rule to Show Cause that is currently scheduled for September 17 and 18, 2018 shall be continued and rescheduled for December 10 and 11, 2018.

Therefore, it is

**ORDERED**, that the hearing scheduled for September 17 and 18, 2018, is hereby continued and rescheduled for December 10 and 11, 2018.

**IT IS SO ORDERED** this 23<sup>rd</sup> day of October, 2018 at Conway, SC.

Jan B. Holmes  
The Honorable Jan Bromell-Holmes  
Presiding Judge for the Family Court  
Fifteenth Judicial Circuit

FILED  
HORRY COUNTY  
2018 NOV - 1 PM 4:09  
MICHELLE ELYS  
CLERK OF COURT  
HORRY COUNTY, SC

Handwritten initials



# Exhibit D

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE FAMILY COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
Case Number: 2014-DR-26-1563

Michelle Davis Capps,  
*Plaintiff,*

-vs-

**ORDER FOLLOWING  
RULE TO SHOW CAUSE HEARING**

Joseph Harold Capps, Jr.,  
*Defendant.*

HORRY COUNTY  
2019 JUL 29 PM 12:33  
RENEE W. DERRICK  
CLERK OF COURT  
HORRY COUNTY, SC

**HEARING JUDGE:**  
**HEARING DATES:**

The Honorable Jan Bromell Holmes  
December 10, 11, 14, 2018;  
May 22-23, 2019

**PLAINTIFF'S ATTORNEY:**

Julaan Derrick

**DEFENDANT'S ATTORNEY:**

Anita F. Lee

**COURT REPORTER:**

Debbie M. Wright (December 10-11, 2018)  
Robin Lewis (December 14, 2018)  
Patsy Martin (May 22-23, 2019)  
Stacy L. Sheppard (June 14, 2019-Ruling on Record)

These parties have had a tortured litigation history dating back to 2014. On June 25 of that year, they entered into a Custody Agreement which was approved by this Honorable Court and made its Order on July 14, 2014. Within days of the July 14<sup>th</sup> approval hearing, Defendant filed a motion to supplement his pleadings so that the parties could obtain a divorce on the ground of one year's continuous separation. Plaintiff refused to waive the time constraints for such a motion, so no divorce could be obtained; accordingly, a hearing date was set for Defendant's motion. Prior to the hearing date, Plaintiff amended her pleadings for a divorce on the fault-based ground of adultery, and finally, on October 3, 2014, the parties were divorced from one another.

Although the marriage ended, the strife between the parties did not, as within months of having their Custody Agreement approved, one or both of them were expressing discontent over the conduct of the other.

On February 10, 2015, Defendant sent Plaintiff a letter wherein he threatened to file a Rule to Show Cause (RTSC) against Plaintiff, but agreed not to if Plaintiff would

*Capps vs. Capps*  
*Order Following RTSC*  
*Case Number: 2014-DR-26-1563*

meet certain criteria; and on May 6, 2016, Defendant filed a RTSC Petition. Plaintiff then filed a RTSC against Defendant, and the two Rules were consolidated for one hearing. After 3 ½ days of court, the parties reached an Agreement which provided in pertinent part that Plaintiff would seek counseling "to address the issue of her alienating the children from Defendant"; and that the parties' children would be in counseling within the next 30 days. Their agreement was approved by the Court and the resulting Order was filed on April 11, 2017.

Less than 9 months later, on January 5, 2018, Defendant presented to The Honorable Melissa Buckhannon an affidavit in support of a Rule to Show Cause (RTSC), and upon review of said affidavit, Judge Buckhannon executed an Order requiring Plaintiff to appear for a second RTSC hearing. The hearing was initially scheduled for September 17-18, 2018, though it was continued until December based upon inclement weather. It was not concluded on December 14, 2018, and was scheduled for conclusion beginning May 22, 2019.

The basis of Defendant's allegations was that Plaintiff had continued a pattern of alienation of the parties' children from Defendant; that she had failed and refused to follow the 2017 Order in several regards; and that her harassment of Defendant had become intolerable. In regards to the latter allegations, Defendant claimed that Plaintiff had created a situation which basically prevented him from being able to make deposits into her account, and in order to avoid direct contact between the parties, he had to travel to different branches of Plaintiff's bank each month, as each time he made a deposit at one branch, Plaintiff's account was somehow "flagged", and he was unable to go back to that branch for future deposits. Defendant further claimed that on an occasion several years ago he had backed into a brick column at Plaintiff's residence and had offered to replace both columns so that they would match. However, according to Defendant, Plaintiff had refused to undertake the project, let alone complete it, though she constantly threatened Defendant regarding this incident, even threatening on one occasion to involve the courts. According to Defendant, he finally

got two estimates and had tendered a check to Defendant for the mean amount of the estimates; however, Plaintiff had refused to cash the check.

Both parties were present throughout the RTSC hearing, and both they and their witnesses offered testimony supporting their various positions. Based upon the testimony, exhibits, supporting documentation and case law pertaining to the issues before the Court, I make the following Findings of Saliient Fact:

#### FINDINGS OF FACT

##### *Jurisdiction*

1. I find that the parties are citizens and residents of the State of South Carolina, County of Horry, and that they have been for many years. They are formerly Husband and Wife, having been divorced from one another by Final Order which was filed October 3, 2014.
2. Prior to the parties' divorce, they had entered into a Marital Settlement Agreement as well as a Custody Agreement, which Agreements were approved by this Honorable Court and made its Orders on July 22, 2014.
3. The parties are before this Honorable Court based upon a RTSC initiated by Defendant, and I find that this Court has jurisdiction of the parties as well as the subject matter before it.

##### *Violations of the Prior Court Orders*

4. Regarding paragraphs 7A and 7B of Defendant's affidavit: I find that page 4, paragraph 5, of the 2017 Order which was filed April 11, 2017 (Order Based Upon Rule to Show Cause), provides that Plaintiff must have an appointment with a counselor, not Harold Brown, to address the issue of alienating the children from the Defendant. The Order does not state that the counselor was to specialize in alienation, only that the Plaintiff was to address the issue of her alienating the children from Defendant.
5. Regarding paragraphs 7C - 7H, inclusive: It appears as though both parties have empowered the children to make decisions as to whether they will comply with

the Order as it pertains to visiting with Defendant. I find that parents are to parent and not to allow their children to set their own rules as to whether they will comply with the Court's Order. Children have a right to be heard and respected; however, giving in to their demands to entice or encourage them to follow (or not follow) the Court Order or the rules of a parent's home should be non-negotiable.

6. Regarding paragraphs 7I and 7J: I find that Plaintiff has violated Section 4D of the Custody Agreement [Final Order Approving Agreement, filed July 22, 2014] which provides that the parties shall be prohibited, forbidden, restrained and enjoined from degrading or denigrating the other in the presence of the children. Specifically Plaintiff instructed the children to record conversations with Defendant during his visitation, as well as encouraged them not to vacate Defendant's automobile until the cell phone in issue, on which she had instructed them to record their father, was located. This type of behavior promotes disrespect, degradation and denigration of the father by the children - with not just the permission, but the insistence, of Plaintiff. I find that Plaintiff is in willful violation of the Court Order as it pertains to this provision.
7. I find that Plaintiff's actions in denying, refusing and interfering with Defendant depositing the alimony and child support amounts in Plaintiff's bank account, as had been established between the parties, was a form of harassment. According to Defendant's testimony, Plaintiff's actions in these regards corresponded with his engagement to his now-Wife.
8. I find that Plaintiff's refusal to resolve the issue of Defendant repairing the brick columns as he had clearly tried to do - as was established through the testimony of Defendant as well as several witnesses - was also a form of harassment.
9. I find that the parties are not allowed to dictate activities for the minor child (the parties' oldest child is now emancipated) during time periods that are allotted to the other parent. The parties are not allowed to schedule or allow the child to

schedule activities that interfere with the time allotted by the Court Order to the other parent.

10. The testimony establishes that the children do as they are told by their mother. Further, they do as the mother instructs or otherwise how they feel when it comes to their father. This is very concerning to the Court because what has occurred here is children have been empowered to be disrespectful to their father. One example is when Emily learned that her grandfather was going to pick her up from school, she called her mother, and suddenly the child became sick and Plaintiff picked her up early from school. The grandfather was not told and he waited in line for over an hour. Defendant was not told about this until after the fact and when he asked who took this child home, he got no response from the child or from Plaintiff. At this RTSC, Plaintiff admitted that she picked up the child from school, thereby preventing the grandfather from exercising the visitation that was allotted to Defendant. This type of behavior is pure manipulation and disrespect, and Plaintiff is teaching the children through her participation in same that such manipulation and disrespect is acceptable. It is not.
11. The Court notes that Defendant does not want to be viewed as the "bad guy". The Court Order expresses that Defendant gets certain time and he shall inform the child that he is going to follow the Court Order. Both parents need to admonish the child that each supports the other's time. It is pure manipulation by the child when she is allowed by either parent to negotiate her time with the other parent. The minor child needs to know that this behavior will not be allowed or tolerated going forward.
12. I find that Emily shall continue in counseling until the counselor recommends otherwise. Further, neither parent shall schedule any activity or event which interferes with this counseling, nor shall either allow the child to schedule an activity or event that interferes with this counseling.

13. I find that Defendant incurred a great deal of attorney's fees in his efforts to gain compliance with the Order and to hold Plaintiff accountable for her failure to comply with the Order. I further find that Defendant retained a well-respected, seasoned attorney to assist him, and that her hourly rate is commensurate with other attorneys who have her experience. I find that the time that Mrs. Lee invested in this matter is reasonable considering the issues that were involved. Finally, I note Defendant's success in this litigation.
14. Although there is a great deal of disparity in the parties' incomes, I find that Plaintiff has sufficient income with which to satisfy a portion of Defendant's fees and costs, as will be discussed more fully hereinbelow.
15. As the parties are aware, I presided over the first RTSC hearing; however, the parties reached an agreement which prevented this Court from making any findings of fact. Generally, I do not place an individual in jail the first time that I make a ruling with respect to a Rule to Show Cause. However, I do admonish the parties that being found in willful violation of the Court Order may subject the offending party to jail time of up to one year; a fine of up to \$1,500; as well as up to 300 hours of community service.
16. In this instance, I find that this Court has been as generous as it could be when considering the conduct which has been displayed by Plaintiff. I admonish Plaintiff that jail time was considered; however, this Court determined that jail time would not be beneficial because the alienation has already occurred. However, if her behavior continues, it will not be a problem for me, or for any other judge, to give jail time. Visitation is mandatory, and if the mother cannot ensure that the minor child exercises her visitation per the Court Order, then perhaps custody should be changed.
17. I find that Plaintiff shall be obligated to pay \$40,000 of Defendant's attorney's fees, to be paid as follows: Defendant shall deduct the sum of \$2,500 from his monthly alimony payment to Plaintiff beginning with the payment which is due

August 1, 2019. These deductions shall continue until this \$40,000 obligation is satisfied in full, which will be after the \$2,500 deduction on November 1, 2020. Thus, beginning with the December, 2020 alimony payment, the full amount of alimony due Plaintiff shall be paid to her according to the terms of the Final Order.

18. In addition to attorney's fees, I find that Plaintiff shall pay a fine of \$1,500 to the Clerk of Court, which fine shall be paid within 48 hours of this Order being filed.

19. Finally, I admonish Plaintiff that these children have two families and everyone should be allowed to bestow their love and support on these children. It is very unfortunate that one would be so selfish that because the relationship did not work out, there would be an attempt to interfere with the relationship between the children and their paternal relatives. This admonition is based upon the Court being made aware that Defendant's visitation with Emily had taken place without incident from December 14<sup>th</sup>, 2018 until the week before this RTSC hearing resumed, but that there had been no visitation during the week preceding this hearing. In addition, there was testimony regarding the unsuccessful attempts by the paternal grandparents to visit with the children; their attempts to attend functions, which were denied; and of course the occasion noted hereinabove when Plaintiff picked up E.C. from school for no reason but to deny the paternal grandfather the opportunity to spend a few minutes with this child. Going forward, this manipulation and disrespect will not be tolerated.

Based upon the above-recited Findings of Fact, I make the following Conclusions of Law:

#### CONCLUSIONS OF LAW

The General Assembly has vested with the Family Courts of this State the exclusive jurisdiction to hear and determine actions related to custody and visitation, and once an Order has been issued, to enforce that Order through its powers of contempt. Therefore, it is

*Capps vs. Capps*  
*Order Following RTSC*  
*Case Number: 2014-DR-26-1563*


*ORDERED*, that Plaintiff is found to be in willful contempt of court, and she shall pay a fine of \$1,500, said fine to be paid to the Clerk of Court for Horry County within 48 hours of this Order being filed and served upon her attorney; and it is further,

*ORDERED*, that Plaintiff shall be responsible for attorney's fees of \$40,000, to be paid in monthly increments of \$2,500 each, commencing August 1, 2019; payment shall be made by way of a \$2,500 monthly reduction of Defendant's alimony obligation to Plaintiff from August, 2019 - November, 2020; the full alimony payment shall resume in December, 2020; and it is further,

*ORDERED*, that Emily shall remain in counseling for as long as the counselor deems appropriate, and neither parent shall schedule activities or events which interferes with the counseling schedule, nor shall either parent allow the child to schedule activities or events which interfere with the counseling schedule; and it is further,

*ORDERED*, that visitation shall take place according to the existing Court Order in effect.

*IT IS SO ORDERED*, this 26<sup>th</sup> day of July, 2019, at Georgetown, South Carolina.

  
The Honorable Jan Bromell Holmes  
Resident Judge of the Family Court  
Fifteenth Judicial Circuit

**NOTICE TO ALL PARTIES: A VIOLATION OF THIS ORDER, WHICH IS DETERMINED TO BE A WILLFUL VIOLATION, MAY RESULT IN A FINDING OF CONTEMPT AND CORRESPONDING SANCTIONS SHALL THEN INCLUDE UP TO ONE YEAR'S IMPRISONMENT, A FINE OF UP TO \$1,500.00, UP TO 300 HOURS OF COMMUNITY SERVICE, OR A COMBINATION OF SOME OR ALL OF THESE PENALTIES. BE SO NOTIFIED!!**



Exhibit E

THE STATE OF SOUTH CAROLINA  
in The Court of Appeals

APPEAL FROM HORRY COUNTY  
In the Family Court

The Honorable Jan Bromell Holmes, Family Court Judge

Civil Action No. 2014-DR-26-1563

FILED  
2019 AUG 23 PM 1:41  
REGINA L. EWING  
CLERK OF COURT  
HORRY COUNTY, SC

Michelle Davis Capps ..... Appellant,  
v.  
Joseph Harold Caps, Jr., ..... Respondent.

NOTICE OF APPEAL

Michelle Davis Capps appeals the order of the Honorable Jan Bromall Holmes dated July 29, 2019.



GREGORY S. FORMAN, ESQUIRE  
Attorney for Appellant  
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Charleston, SC 29401  
(843) 720-3749  
attorney@gregoryforman.com

August 20, 2019

Other Counsel of Record:

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Ms. Anita Floyd Lee  
Attorney for Respondent  
1115 Third Avenue  
Conway SC 29526  
(843) 248-3206  
afloyd@anitafloydllaw.com

SCANNED

Exhibit L

STATE OF SOUTH CAROLINA

COUNTY OF Horry

MICHELLE DAVIS CAPPS

Plaintiff,

vs.

JOSEPH HAROLD CAPPS, JR.

Defendant.

IN THE FAMILY COURT  
FIFTEENTH JUDICIAL CIRCUIT

JUDGMENT IN A  
FAMILY COURT CASE

Docket No. 2020-DR-26-1440

Submitted by:  Gregory Forman	Attorney for <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	<input type="checkbox"/> Self-Represented Litigant <input type="checkbox"/> GAL

DECISION BY COURT (check all that apply)

- This action came to trial, hearing or was resolved by consent and an order was rendered.
- This action has been dismissed pursuant to  Rule 12(b), SCRPC  Rule 41(a), SCRPC
- Rule 43(k), SCRPC  Family Court Benchmark
- Other: \_\_\_\_\_

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:

Additional information for Clerk: \_\_\_\_\_

ORDER INFORMATION

- This is a  Temporary  Final order. If Final, does this order end the case?  Yes  No
- Support  is not ordered  is ordered, and it is to be paid  through the court:  directly to the CP.
- Case number under which support is paid if different from this one: \_\_\_\_\_
- This order involves the immediate  issuance  dismissal of a bench warrant, or  does not apply.
- The following motions are ended by this order (include motion filing date): Plaintiff's motion for temporary relief filed September 8, 2020
- This order adds or dismisses the following parties to this case:
  - dismiss  add: \_\_\_\_\_
  - dismiss  add: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1))		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.		
Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: title abstractors and researchers should refer to the official court order for judgment details.

Jan B. Holmes  
Family Court Judge

4144  
Judge Code

October 29<sup>th</sup>, 2020  
Date

SCANNED

**FOR CLERK OF COURT OFFICE USE ONLY**

This judgment was entered on the \_\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on \_\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEYS FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:** \_\_\_\_\_

**Custodial Parent (if applicable):** \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

MICHELLE DAVIS CAPPS,

Plaintiff(s),

v.

JOSEPH HAROLD CAPPS, JR.,

Defendant(s).

IN THE FAMILY COURT  
FOR THE FIFTEENTH JUDICIAL  
CIRCUIT

CASE NO: 2020-DR-26-1440

**ORDER FROM PLAINTIFF'S  
MOTION FOR TEMPORARY RELIEF**

FILED  
CLERK OF COURT  
FIFTEENTH JUDICIAL CIRCUIT  
HORRY COUNTY, SOUTH CAROLINA  
SEP 29 2020

Date of Hearing:

September 25, 2020

Presiding Judge:

The Honorable Jan B. Bromell Holmes

Attorney for Plaintiff:

Gregory Forman

Attorney for Defendant:

Anita Floyd Lee

Court Reporter:

DCAP

This matter came before me on the 25<sup>th</sup> day of September, 2020, on the Plaintiff's motion for temporary relief. Appearing at the hearing were both parties with their respective attorneys. After reviewing the pleadings, the motion and return, and the parties' affidavits, this court issues the following order:

1. The Plaintiff's request that the Defendant contribute to HKC's college expenses on a temporary basis is denied. Each of these college expense cases are fact specific. The funds for college are available for the eldest child on behalf of the Defendant Father. The eldest child is not a party to the action and has engaged in direct communication with the Father concerning the issue. She has not submitted an affidavit as to her request to the Father to pay any amount and because she is not a party to this action is not subjected to cross examination as to her communication with her Father concerning her request or her efforts made in paying for college, obtaining a job or applying for loans. The Father included in his affidavit the discussion with the eldest child. On a temporary basis, the

Court will not grant any relief.

2. Both parties' requests for temporary fees and costs are held in abeyance.
3. As the Defendant's request for dismissal was not before the court, the court did not address it.

IT IS SO ORDERED!

  
\_\_\_\_\_  
THE HONORABLE JAN B. BROMELL HOLMES  
PRESIDING JUDGE, FAMILY COURT

Georgetown, South Carolina  
October 29<sup>th</sup> 2020

Exhibit M

STATE OF SOUTH CAROLINA )  
COUNTY OF HORRY )

IN THE FAMILY-COURT OF THE )  
FIFTEENTH JUDICIAL CIRCUIT )  
Case Number: 2020-DR-26-1440 )

Michelle Davis Capps, )  
Plaintiff, )

**FINAL ORDER**  
**(Ending Action)**

-vs- )

Joseph Harold Capps, Jr., )  
Defendant. )

FILED  
HORRY COUNTY  
2021 MAR -9 A 11:22  
RENEE M. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

**TRIAL JUDGE:**

The Honorable Jan Bromell Holmes  
November 2, 2021

**DATE:**

**PLAINTIFF'S ATTORNEY:**

Gregory S. Forman

**DEFENDANT'S ATTORNEY:**

Anita F. Lee

**COURT REPORTER:**

Julie Kevish

On July 30, 2020, Plaintiff filed an action seeking, *inter alia*, financial assistance with college expenses of the parties' two children, the older of whom was a college student at the University of South Carolina when this action commenced, and the younger of whom was still in high school at the commencement of the action. Defendant was served with process and his attorney, Anita Lee, filed an Answer and Counterclaim on September 25, 2020. Plaintiff then filed a Reply on October 5, 2020, thereby joining the issues.

The parties attended mediation but were unable to resolve the issues, and on March 15, 2021, Defendant filed a motion requesting that Plaintiff's Complaint be dismissed; or in the alternative, that he be relieved of any obligation to provide his personal financial information to Plaintiff; or in the alternative that he be allowed to provide his financial declaration under seal, for the Court's eyes only. Both parties have requested attorney's fees and costs.

At the commencement of the hearing, Defendant acknowledged that his requested relief was unique, though he further argued that his request was understandable in this particular factual situation, and that equity demanded he be provided the protection he has requested. In support of his position, Defendant iterated the parties' unusual marital and litigation history, as follows:

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Capps vs. Capps  
Final Order  
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SCANNED

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**History**

The parties separated from one another approximately 10 years ago, and they entered into two separate agreements on June 25, 2014, one of which addressed issues related to the parties' children, and another which addressed the financial issues and obligations of the parties. Their agreements were approved by this Court, which merged, adopted and incorporated the terms of their agreements into a Final Order. [See EXHIBIT "A" and EXHIBIT "B", attached hereto].

Thereafter, two Rules to Show Cause were issued against Plaintiff based upon Defendant's allegations that Plaintiff had alienated the children from him. [See EXHIBIT "C" and EXHIBIT "D", attached hereto]. The first Rule to Show Cause (RTSC) was resolved after 3 days of trial, and Plaintiff was found to be in contempt of court after the second RTSC hearing.

Within days of the court's ruling after the second RTSC hearing, Defendant filed an action for custody of the parties' youngest child, and this Court issued an *ex parte* Order awarding unto him this relief. The *ex parte* order matured into a temporary order following a hearing for this purpose, and Plaintiff was forbidden from having any communication with the child [See EXHIBIT "E", attached hereto]. Ultimately, the case was resolved through the emancipation of the youngest child [See EXHIBIT "F", attached hereto].

According to Defendant, Plaintiff's alienation tactics included her discussing with the children how much money Defendant allegedly earned and what he paid by way of child support and alimony. Evidence was presented at the first and/or second Rules to Show Cause that Plaintiff had told the children Defendant loved money more than he loved them; that Defendant had kicked them out of their house; and that Defendant had broken his promise to buy a vehicle for the oldest child. Plaintiff also took the oldest child to visit various private and out-of-state colleges, thus indicating to this child that Defendant would finance her college education at whatever institution she elected to attend, even in New York City. She did this notwithstanding that one aspect of the parties' Marital Settlement Agreement was that Defendant would fully fund the South Carolina College Tuition Prepaid Program, which program applied only to in-state public institutions.

In addition, on July 17, 2017, the youngest child, who was then 14 years of age, was caught taking pictures of financial records Defendant had in a briefcase in his vehicle. This

last incident was audio recorded by Defendant and the recording was played at the second Rule to Show Cause hearing, and is referenced in the resulting order (which is currently under appeal).

According to Defendant, Plaintiff is obsessed with him and with knowing his income and his financial status, and this Court takes note that the Orders issued from the Rules to Show Cause, as well as Plaintiff's repeated efforts to obtain information related to Defendant's income in this matter, appear to support Defendant's contentions in those regards. Also of note is that at the issuance of this Order, the second Rule to Show Cause Order remains under appeal [See EXHIBIT "G", attached hereto].

Plaintiff argues that *even if* Defendant's arguments are valid - which she denies - she is entitled to this information as a matter of law and in accordance with the South Carolina Family Court Rule 20.

Based upon the arguments of counsel, I make the following findings of salient fact:

#### **FINDINGS OF FACT**

##### ***Jurisdiction***

1. I find that the parties are formerly husband and wife, and that during their marriage, they had two children, both of whom are now emancipated. I further find that the parties resided in Horry County, South Carolina throughout all or the majority of their marriage, at the time of their separation, and also continuously since that time.
2. I find that since their divorce, the parties have endured an acrimonious and litigious relationship which includes the filing of several contempt actions; a modification of custody action; and the within action which was instituted for assistance with college and related expenses.
3. I find that this Court has jurisdiction and continuing jurisdiction of the parties as well as the subject matter before it.

##### ***Separation and Divorce***

4. On June 25, 2014, the parties reached two separate agreements which addressed their marital issues, and on July 3, 2014, Plaintiff/Mother filed an action for Separate Support and Maintenance, wherein she sought approval of the parties' agreements [See EXHIBIT "G", attached hereto]. On July 8, 2014, Defendant/Father filed an Answer and Counterclaim seeking a divorce on the ground of one year's separation, without

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cohabitation. A hearing was requested to approve their agreements, and Defendant then moved to supplement the pleadings to request a divorce simultaneous with the approval of their agreements. Plaintiff/Mother opposed Defendant's motion, and on July 14, 2014, the parties were granted Separate Support and Maintenance [See EXHIBIT "H", attached hereto].

5. On August 6, 2014, Plaintiff amended her complaint to request a divorce on the ground of adultery [See EXHIBIT "I", attached hereto]. On September 2, 2014, Defendant filed an Answer and Counterclaim to Plaintiff's Amended Complaint [See EXHIBIT "J", attached hereto].
6. The parties were ultimately divorced from one another on October 3, 2014.

**Post-Divorce Litigation**

7. On May 6, 2016, Defendant signed an affidavit in support of a Rule to Show Cause, wherein he alleged that Plaintiff had engaged in a pattern of alienation as between him and the then-minor children. The RTSC was issued, and after 3 days of trial, the matter was resolved, with Plaintiff agreeing, *inter alia*, to obtain counseling to address her pattern of alienation, and to pay attorney's fees to Defendant in the amount of \$20,000. The resulting Order was signed April 11, 2017.
8. On January 5, 2018, Defendant filed another affidavit in support of a RTSC, alleging both that Plaintiff had not complied with the April 11, 2017 Order, and also that Plaintiff had continued her pattern of alienation. The RTSC was issued, and trial was held December 10-14, 2018, and May 22-23, 2019. Although Plaintiff denied Defendant's allegations, after 5 days of trial, Plaintiff was found to be in contempt of court. However, Plaintiff has appealed that order and the appellate court has yet to issue its ruling.
9. On June 17, 2019 after the order from the second RTSC had been issued, Defendant /Father filed an action for emergency custody of the parties' youngest child (case number 2019-DR-26-1437), as the oldest child had become emancipated. On this same date, an *ex parte* Order was issued granting Father custody, and by Order dated June 21, 2019, and filed June 24, 2019, the *ex parte* Order was confirmed and custody remained with Father. Father's obligation to pay support was also terminated, and

Mother was prohibited from having any communication with the minor child outside of a therapeutic setting.

10. According to Father, at the behest of both the Guardian *ad litem* and the court-ordered counselor, he allowed an unsupervised visit at mother's home during the quarantine in March, 2020, following which the child did not return to Father's home. According to Mother, the child did not want to return to Father's home, nor could she force the child to return to Father's home. At the time, the child was 17 years of age.
11. On July 6, 2020, Mother filed a motion for child support. On July 8, 2020, Father filed a RTSC against Mother, alleging that Mother had contacted the minor child in violation of an absolute restraining order, and within days of the order being issued; and also alleging that Mother had failed to return the child following a scheduled visitation, or in the alternative that she had allowed the child to remain at her residence after a visitation had ended. The RTSC was issued, though due to COVID, the hearing did not occur until August 12, 2021, after the youngest child had become emancipated.
12. Mother's motion was denied, with the Court finding that the child should never have been at Mother's home, as Father had legal custody throughout the time in issue; and that Father had not only never relinquished physical custody, but he had also demanded that the child return to his home, to no avail.
13. Regarding Father's Rule, Father dismissed his allegation regarding the failure of the child to return to his home, but he proceeded on the issue of Mother allegedly communicating with the child within days of an order being issued which prohibited all contact between Mother and child. At the hearing, Mother acknowledged that her phone rang, and that there was a connection between her phone and that of the child. However, she claimed that the call was made from an unknown app and that she did not even know the phones had connected as she had turned the phone over and had walked away as soon as the phone started ringing. Although the connection remained for more than 20 minutes, Plaintiff maintained there was no communication between her and the parties' daughter, and thus no violation of the restraining order. The Honorable Ronald Norton found that Father had not proven that any communication had taken place, and Mother was thus found not to be in contempt of court.

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*Capps vs. Capps*

*Final Order*

*Case Number: 2020-DR-26-1440*

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14. On August 16, 2021, the 2019 custody action was dismissed, based upon the emancipation of the child.

***Prepaid College Tuition & Equitable Apportionment***

15. The South Carolina Code of Laws §20-3-620 (2008, as amended), provides as follows:

(A) In a proceeding for divorce a vinculo matrimonii or separate support and maintenance ... the court shall make a final equitable apportionment between the parties of the parties' marital property upon request by either party in the pleadings.

.....

(C) The court's order as it affects distribution of marital property shall be a final order not subject to modification except by appeal or remand following proper appeal.

16. The parties' Agreement as it relates to equitable apportionment was signed on June 25, 2014, and on July 22, 2014, it was approved by this Court and made its Final Order.

Neither party appealed the Order approving said Agreement.

17. Page 7 of the parties' Agreement provides as follows:

Upon division of assets as herein provided, the parties hereto do hereby agree that the manner in which they have divided all real and personal property represents a fair and equitable division of the assets of the parties arising out of the marital relationship.

Pages 10-11 of the parties' Agreement further provides that

Once approved and made the Order of this Court, the Family Court of the State of South Carolina shall have continuing jurisdiction to enforce the terms and conditions of this Agreement, along with any Order issued with respect thereto; and both Wife and Husband shall be subject to the contempt powers and jurisdiction of the Family Court of the State of South Carolina with respect to any breach or violation of this Agreement or the Order of this Court.

Wife and Husband hereby acknowledge and agree that this is a full and complete agreement with respect to all matters raised, and with respect to those which could have been raised between them, and is considered by them to be a fully-integrated agreement. It is the intent of the parties hereto that the provisions of this Agreement shall govern all rights and obligations of the parties, as well as all rights of modification as specifically stated within this

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*Capps vs. Capps*

*Final Order*

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JBI

Agreement; and, further, the terms and conditions of this Agreement, and any Order approving the same, shall not be modifiable by the parties or any Court without the written consent of Wife and Husband.

The parties specifically agree that neither the Family Court of the State of South Carolina nor any other court shall have any jurisdiction to modify, supplement, terminate, or amend this Agreement, or the rights and obligations of the parties [Marital Settlement Agreement (MSA) pages 10-11].

**GENERAL PROVISIONS:**

B. This Agreement expresses the entire agreement between the parties and supersedes any prior understandings or agreements between them [MSA, page 11].

18. Attached to the parties' MSA is a Marital Assets Addendum (MAA), which is the supporting document for their agreement as to equitable apportionment. The parties' MAA reflects that a Prepaid Tuition college plan existed for both of the parties' children, and that further, Husband (Defendant herein) was to assume the debt related to said plan. Husband was provided neither a credit for the value of the plan nor for the value of the debt that encumbered the plan. It was included on the MAA to outline Defendant's college support obligation. By agreement of the parties, Husband's obligation was limited to what was set forth on the MAA, absent "the written consent of Wife and Husband". The parties further agreed that this Court did not even have jurisdiction to "modify, supplement, terminate, or amend [the parties'] Agreement, or the rights and obligations of the parties".

Interestingly, unlike most divorcing couples, Plaintiff and Defendant entered into two separate agreements - a Marital Settlement Agreement, and a Custodial Agreement [See EXHIBIT "A" and EXHIBIT "B" attached hereto]. They elected to address Defendant's financial obligation for college on the MAA, which was subject to enforcement but not modification, rather than in their Custodial Agreement which addressed Defendant's other financial obligations for the children and could have



son appeared to have a good relationship: they were in regular communication regarding son's college education, father had approved of son's choice of college and had agreed in an email to repay all of the child's student loans upon graduation. 396 S.C. at 652. In addition, in that case father had also co-signed a promissory note for the child's student loans, and he agreed to pick up the child's "odd expenses" related to college; he also told the child to call him if he ever needed help. *Id.*

23. In contrast to McLeod vs. Starnes, Defendant in this instance was never consulted about college prior to the child's decision to go to USC. Furthermore, Dr. Capps and the child had a very strained relationship even before Plaintiff took the child to visit out-of-state and private colleges, and when Defendant refused to even consider paying for the child to live in and attend college in New York City, the estrangement between father and daughter increased to the point that the child expressed hatred of Dr. Capps on social media [See EXHIBIT "K", attached hereto]. The child's social media postings were not only disparaging, but they were potentially slanderous, as she claimed Defendant had refused to pay for her college and/or that he must not want her to attend college.

24. Although this Court has previously determined that Plaintiff has engaged in alienation tactics, that is not the issue in this instance, as regardless of Plaintiff's alleged contribution to the estrangement between father and daughter, the child has expressed pure hatred of Defendant, as well as of those whom she believes have assisted Defendant in some way.

25. In his affidavit dated September 25, 2020, initially presented at the temporary hearing on that same date, with a copy being provided at this hearing, Defendant begged this Court not to force him to turn over the child's college fund. According to Defendant's affidavit, he had repeatedly tried to get this child to attend counseling to address their relationship issues, and he had told his oldest daughter they would discuss college expenses as well as other issues in counseling. However, the child had refused to attend counseling. Defendant expressed concern that if he was forced to turn over the college account, his authority would be undermined and his daughter would learn "a very bad lesson". The court did not require Defendant to turn over the

college account at the temporary hearing on September 25, 2020. On the date of this hearing, Defendant expressed that the account had been turned over to the child.

26. Interestingly, this Court notes that rather than cooperate with Defendant's efforts to repair his relationship with his children, Plaintiff elected to instead file an action and seek relief beyond that to which she had agreed at the time the parties entered into their Marital Settlement Agreement. This Court is confounded by Plaintiff's position, in that Defendant had apparently addressed directly with the children the conditions for receiving their college funds, and even assistance beyond merely those funds, though rather than cooperate with Defendant's efforts, and rather than encouraging the children to repair their relationship with Defendant, she instead allegedly\* paid some of the oldest child's college expenses and then filed this action seeking to force Defendant to reimburse her. In addition, Plaintiff expressed to the oldest child that she (the child) needed to provide as many expenses as possible to

\* Defendant claimed to have paid some of the child's college expenses but verification of such expenses has not been provided.

support the greatest amount possible in her claim for college expenses [See EXHIBIT "L", attached hereto].

27. I find that Plaintiff's actions only aggravated the estrangement between father and daughter, as is evident from the child's refusal to speak with her father about anything except her college expenses and health insurance.

28. Unlike in McLeod vs. Starnes, the children of Dr. and Ms. Capps in this instance have shown total disrespect for Defendant. Regardless of whether Plaintiff has created the estrangement, or contributed to the estrangement, the fact is that the estrangement not only exists, but is to a degree that this court has seldom if ever experienced, and the oldest child's allegations of hatred toward her father greatly distinguishes the within matter from that of McLeod vs. Starnes.

29. Although Plaintiff points to McLeod vs. Starnes as precedent, father and child in that case appear to have a close emotional bond and they share a common affection for one another. That is in stark contrast to the facts of this case, where the child has

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elected not to have a relationship with her father and has very clearly expressed that on social media.

30. Alienation is not the issue in this matter, and whether Plaintiff has created or contributed to the alienation is not for this Court's consideration. However, for the reasons noted, I find that – even if the issue of college was not addressed in the parties' Marital Settlement Agreement – issuing the order Plaintiff has requested would be contraindicated to public policy that divorced parents should encourage the relationship between children and the other parent.

***McLeod vs. Starnes***

31. As indicated, Plaintiff relies upon *McLeod vs. Starnes*, 396 S.C. 647, 723 S.E. 2d 198 (SC 2012); to support her request for college-related financial assistance. In that case, the Court determined that Father's refusal to contribute towards the child's college expenses proved the very ill that *Risinger vs. Risinger*, 273 S.C. 36, 253 S.E. 2d 652 (1979) attempted to alleviate, but which was overruled by *Webb vs. Sowell*, 692 S.E. 2d 543 (SCSC, 2010). In *McLeod*, the Court stated that

"Father articulated no defensible reason for his refusal other than the shield erected by *Webb*. What other reason could there be for a father with more than adequate means and a son who truly desires to attend college to skirt the obligation the father almost certainly would have assumed had he not divorced the child's mother?... [The child] has therefore fallen victim to the precise harm that prompted the courts... to hold that a non-custodial parent could be ordered to contribute towards a child's college education. Thus, this case amply demonstrates what we failed to recognize in *Webb*: sometimes the acrimony of marital litigation impacts a parent's normal sense of obligation towards his or her children. While this is a harsh reality, it is a reality nonetheless that *Risinger* sought to address.

*McLeod vs. Starnes*, 396 S.C. at 658-659.

32. In this instance, the child may have "fallen victim" to one parent's alienation tactics; however, it is the child who has posted some of the most vile and despicable comments that this Court has ever seen from a child towards a parent.

33. Additionally, despite the actions of one or both children, Defendant has repeatedly asked both of them to attend counseling, where he has indicated the costs of college

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*Capps vs. Capps*

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Page 11



would be addressed. However, since reaching the age of majority the children have refused. From all appearances, at least one of the children has refused Defendant's assistance except on her terms, and I find that is not something the courts can or should embrace.

34. Despite two Rules to Show Cause instituted by Defendant, an action for custody instituted by Defendant, the involvement of numerous counselors and one alienation expert, and at least two different Guardians *ad litem*, this Court has never been made aware of any evil, crime, offense or wrongdoing of their father. Certainly there have been the normal disagreements that often occur between parent and child, but nothing to support the loathing that these children have expressed toward Defendant.

35. If the children had attended counseling, or had put forth any effort to repair their relationship with Defendant, or if they had come forward and explained the reasons for their contempt for their father, perhaps this Court could have found some commonality with the facts of *McLeod vs. Starnes*. Furthermore, unlike the facts of *McLeod vs. Starnes*, the children in this matter do not appear to even want a relationship with their father, and it is their father who has continued to try and rebuild that relationship, thus far to no avail. Accordingly, this case is distinguishable from *McLeod vs. Starnes* in that there is no indication that the acrimony of marital litigation has impacted Defendant's normal sense of obligation towards his children. Indeed, Defendant has gone to great lengths to try and be involved and influential in his children's lives, but he has made clear to them that they do not make the rules for his financial support, and he has provided clear terms for them to get his financial support. It is the children who have thus far elected to ignore this opportunity. Indeed, this Court does not even know if the children desire any assistance from Defendant beyond what has been provided.

***Rissinger vs. Rissinger***

36. Plaintiff also maintains that Defendant should be responsible for the children's college expenses according to standards set forth in *Rissinger vs. Rissinger*, 273 S.C. 36, 253 S.E. 2d 652 (1979). Therein, the Supreme Court instructed the trial court to apply the following factors when determining whether one or both parents should be

required to contribute to a child's college expenses: (1) the characteristics of the child indicate that he or she will benefit from college; and (2) the child demonstrates the ability to do well, or at least make satisfactory grades; and (3) the child cannot otherwise go to college; and (4) the parent has the financial ability to pay for such an education.

37. I find that neither child is a party, neither has sought to become a party, nor has either provided an affidavit. Further, Plaintiff has had every opportunity to bring them in as parties, but she has not done so nor would she commit to even calling them as witnesses. Accordingly, this Court is not aware of grants or scholarships for which the children have applied or received; this Court is not aware of the children's outstanding college expenses; and this Court is not aware of whether the children are working in college or have worked in the summer to contribute toward these expenses. This is information that in this instance needs to come directly from the children. Additionally, the attached EXHIBIT "L" calls into question Plaintiff's motivation for instituting this action.

38. This Court also recognizes that if the children do want or need Defendant's assistance, the hurdle to cross *Rissinger* standard #3 (the child cannot otherwise go to college) will be very difficult, especially since Defendant offered to address college expenses in counseling, and the children refused that opportunity.

39. Plaintiff attempts by this action to recoup what she claims to have paid towards the oldest child's college expenses; however, Plaintiff also has a substantial income by way of alimony. Accordingly, she is not necessarily exempt from her obligation to assist with these expenses. Further, by all appearances, Defendant has fulfilled his obligation, at least as between Plaintiff and Defendant. Specifically, the total purchase price for the South Carolina Tuition Prepayment Program was \$74,646.44, with \$36,611.15 being set aside for the parties' oldest daughter Haley Katherine, and \$38,035.29 being set aside for the youngest child Emily.

40. This Court is also very concerned that Plaintiff involved the oldest child in her efforts to extract as much money from Defendant as was possible. Thus, even if the Court had not determined that Defendant's obligation to Plaintiff was limited by virtue of

~~the parties' Agreement; Plaintiff has to some extent sabotaged her own request by involving the oldest child in a conspiracy to have Defendant financially responsible for "the highest level of need possible."~~

41. Considering the above, I find that the requirements of Rissinger vs. Rissinger have not been established, and that further, they cannot be established without the adult children, who in this instance, based on the facts of this case, I find to be necessary parties.

***South Carolina Rule of Civil Procedure 19(b)***

42. Given the particular facts of this case, there is no way this Court could address the financial needs of the adult children, or even determine if they would be entitled to this relief, without their presence as parties. In addition, because of the unusual facts, there is no way to assess Plaintiff's claims or Defendant's defenses to those claims, without the children being present as parties, especially in light of the Exhibit "L" which brings Plaintiff's motivations into issue. Thus, without the adult children, there is no way to determine whether a judgement is warranted, and if so, whether it would be adequate. Finally, given the facts of this case, Plaintiff is not prejudiced by this dismissal, as her entitlement was limited by the parties' MAA.

43. Considering the above, I find that Plaintiff's complaint should be dismissed pursuant to the SCRCP 19(b).

Based upon the above-recited Findings of Fact, I make the following Conclusions

of Law:

**CONCLUSIONS OF LAW**

The General Assembly has previously vested with the Family Courts of this State the exclusive jurisdiction to hear and determine matters incidental to the termination of marriages as well as the enforcement of marital and custodial agreements, and also to enforce their Orders through contempt powers, pursuant to Title 20 of the South Carolina Code of Laws, 2008, as amended. After having reviewed the facts as well as the applicable

case law in this instance, and after having also considered the Rules of Procedure as well as the common law as well as public policy, it is

**ORDERED**, that Plaintiff's complaint is hereby dismissed, with prejudice, for the reasons noted hereinabove; and it is further,

**ORDERED**, that this ruling in no way impacts the adult children's ability to pursue an action against their father, if they so choose.

**IT IS SO ORDERED**, this 4<sup>th</sup> day of March, 2022, in Conway, South Carolina.

*Jan B. Bromell Holmes*

Jan B. Bromell Holmes, Presiding  
Judge for the Family Court  
Fifteenth Judicial Circuit

**NOTICE TO ALL PARTIES: A VIOLATION OF THIS ORDER, WHICH IS DETERMINED TO BE A WILLFUL VIOLATION, MAY RESULT IN A FINDING OF CONTEMPT AND CORRESPONDING SANCTIONS SHALL THEN INCLUDE UP TO ONE YEAR'S IMPRISONMENT, A FINE OF UP TO \$1,500.00, UP TO 300 HOURS OF COMMUNITY SERVICE, OR A COMBINATION OF SOME OR ALL OF THESE PENALTIES. BE SO NOTIFIED!!**

\*\*\*\*\*

*Capps vs. Capps*

*Final Order*

*Case Number: 2020-DR-26-1440*

Exhibit 0

From: "Michelle Capps"  
To: [hcapps@sc.rr.com](mailto:hcapps@sc.rr.com)  
Cc:  
Sent: Friday September 18 2020 11:29:07AM  
Subject: Fwd: Estimated Family Contribution

Sent from my iPhone

Begin forwarded message:

**From:** Michelle Capps <[mdaviscapps@gmail.com](mailto:mdaviscapps@gmail.com)>  
**Date:** September 17, 2020 at 12:33:24 PM EDT  
**To:** "CAPPS, HALEY K" <[HCAPPS@email.sc.edu](mailto:HCAPPS@email.sc.edu)>  
**Subject:** Re: Estimated Family Contribution

Hey Sweetie-

I am attaching your current USC - Estimated Family Contribution sheets. Please contact the Financial Aid office and request a copy of our EFC sheets/form PRIOR TO ME SUBMITTING THE CHANGE OF CIRCUMSTANCES INFO.. This is really important b/c I want to have the highest level of need possible for your dad to be responsible for. Please try to do this as soon as possible please.

Love you so much!

Exhibit A



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

CATHERINE S. HARRISON  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1800  
FAX: (803) 734-1839  
www.sccourts.org

February 07, 2024

The Honorable Renee Elvis  
PO Box 677  
Conway SC 29528-0677

## REMITTITUR

Re: Michelle Capps v. Joseph Capps, Jr.  
Lower Court Case No. 2014DR2601563  
Appellate Case No. 2019-001409

FILED  
HARRIS COUNTY  
2024 FEB -9 P 1:15  
RENEE ELVIS  
CLERK OF COURT  
HARRIS COUNTY, SC

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

Enclosure

- cc: Julaan Derrick, Esquire
- Gregory Samuel Forman, Esquire
- Anita Floyd Lee, Esquire
- Vordman Carlisle Traywick, III, Esquire
- Benjamin Rogers Gooding, Esquire

SEARCHED 2/9/24

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Michelle Davis Capps, Appellant,

v.

Joseph Harold Capps, Jr., Respondent.

Appellate Case No. 2019-001409

FILED  
HORRY COUNTY  
2024 FEB 19 P 1:16  
REBECCA EWING  
CLERK OF COURT  
HORRY COUNTY, SC

Appeal From Horry County  
Jan B. Bromell Holmes, Family Court Judge

Unpublished Opinion No. 2024-UP-021  
Heard November 9, 2023 – Filed January 17, 2024

**AFFIRMED AS MODIFIED IN PART, AND  
REVERSED IN PART**

Julaan Derrick, of Julaan Derrick, Attorney at Law, of  
Conway, and Gregory Samuel Forman, of Gregory S.  
Forman, PC, of Charleston, for Appellant.

Benjamin Rogers Gooding and Vordman Carlisle  
Traywick, III, both of Robinson Gray Stepp & Laffitte,  
LLC, of Columbia; and Anita Floyd Lee, of Conway, for  
Respondent.

**PER CURIAM:** Michelle Davis Capps (Wife) appeals the family court's order in this rule to show cause arising out of her divorce from Joseph Harold Capps, Jr. (Husband). Wife maintains the family court erred in finding she violated its order by harassing Husband and alienating him from the parties' two daughters. Wife further maintains the family court erred in awarding Husband attorney's fees. Finally, Wife appeals the order of this court remanding the matter for a reconstruction of the record as to a portion of the transcript from the rule to show cause hearing that was lost. We affirm as modified in part and reverse in part.

1. As to this court's order remanding the matter to the family court for reconstruction of the record, we affirm. *See Adams v. H.R. Allen, Inc.*, 397 S.C. 652, 656-57, 726 S.E.2d 9, 12 (Ct. App. 2012) ("A new trial is . . . appropriate if the appellant establishes that the incomplete nature of the transcript prevents the appellate court from conducting a meaningful appellate review." (quoting *State v. Ladson*, 373 S.C. 320, 325, 644 S.E.2d 271, 274 (Ct. App. 2007))); *Ladson*, 373 at 327, 644 S.E.2d at 274-75 (granting appellant a new trial when he demonstrated clear prejudice based on missing portions of the trial transcript). Here, the record demonstrates the family court had made copious notes regarding pertinent testimony at the rule to show cause hearing. Wife offered no affidavits at the reconstruction hearing and only sought to add a few pieces of information about Husband's cross-examination that do not appear to have been particularly beneficial to her. Further, the trial exhibits included in the record on appeal aid in developing a fuller picture of the state of affairs between the parties. Based on all the circumstances, we are able to conduct a meaningful review, and Wife has not demonstrated the reconstruction prejudiced her.

2. As to the family court's determination Wife harassed Husband by modifying her bank account to prohibit his deposit of her alimony payment, we find Husband failed to prove a violation of the family court's order by clear and convincing evidence. *See Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011) (explaining the appellate court's standard of review in family court cases is de novo); *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001) ("[B]efore a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct."); *Tirado v. Tirado*, 339 S.C. 649, 654, 530 S.E.2d 128, 131 (Ct. App. 2000) ("A finding of contempt . . . must be reflected in a record that is 'clear and specific as to the acts or conduct upon which such finding is based.'" (quoting *Curlee v. Howle*, 277 S.C. 377, 382, 287 S.E.2d 915, 918 (1982))); *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 607, 567 S.E.2d 514, 519 (Ct. App. 2002) ("[C]ontempt results from willful disobedience of a court order; and before a person may be held in contempt, the record must be



clear and specific as to acts or conduct upon which the contempt is based." (quoting *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994)); *id.* at 607-08, 567 S.E.2d at 520 ("A willful act is . . . one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." (quoting *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217)). The family court's order did not specify the manner in which alimony payments must be paid or accepted, and the record demonstrates Husband refused to attempt to render the payment in alternative forms Wife suggested, including via certified mail. Consequently, the family court's finding of contempt as to this issue is reversed.

3. As to the family court's determination Wife harassed Husband by failing to repair the brick columns at the parties' former marital residence as well as by suggesting she would sue him in magistrate's court, we find Husband failed to prove a violation of the family court's order by clear and convincing evidence. See *Lewis*, 392 S.C. at 386, 709 S.E.2d at 652 (explaining the appellate court's standard of review in family court cases is *de novo*); *Widman*, 348 S.C. at 119, 557 S.E.2d at 705 ("[B]efore a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct."); *Tirado*, 339 S.C. at 654, 530 S.E.2d at 131 ("A finding of contempt . . . must be reflected in a record that is 'clear and specific as to the acts or conduct upon which such finding is based.'" (quoting *Curlee*, 277 S.C. at 382, 287 S.E.2d at 918)); *Cheap-O's Truck Stop, Inc.*, 350 S.C. at 607, 567 S.E.2d at 519 ("[C]ontempt results from willful disobedience of a court order; and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based." (quoting *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217)); *id.* at 607-08, 567 S.E.2d at 520 ("A willful act is . . . one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." (quoting *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217)). While Wife's refusal to resolve the issue on terms that were satisfactory to Husband may have frustrated him, it was Wife's right to determine the manner in which she would repair the column that Husband admitted he damaged. Additionally, she was entitled to pursue a legal remedy through the judicial system if she so chose. We conclude this conduct does not rise to the level of harassment contemplated by the family court's order and therefore reverse this finding.

4. Regarding the family court's determination Wife denigrated Husband to the parties' children, we find Husband established a violation of the family court's

order by clear and convincing evidence. *See Lewis*, 392 S.C. at 392, 709 S.E.2d at 655 ("[W]hile retaining the authority to make our own findings of fact, we recognize the superior position of the family court in making credibility determinations." (footnote omitted)); *Widman*, 348 S.C. at 119, 557 S.E.2d at 705 ("[B]efore a court may find a person in contempt, the record must clearly and specifically reflect the contemptuous conduct."); *Tirado*, 339 S.C. at 654, 530 S.E.2d at 131 ("A finding of contempt . . . must be reflected in a record that is clear and specific as to the acts or conduct upon which such finding is based." (quoting *Curlee*, 277 S.C. at 382, 287 S.E.2d at 918)); *Cheap-O's Truck Stop, Inc.*, 350 S.C. at 607, 567 S.E.2d at 519 ("[C]ontempt results from willful disobedience of a court order; and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based." (quoting *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217)); *id.* at 607-08, 567 S.E.2d at 520 ("A willful act is . . . one done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law." (quoting *Bevilacqua*, 316 S.C. at 129, 447 S.E.2d at 217)). We find the testimony, texts, and audio recording of Husband and Wife's confrontation regarding one daughter's recording Husband provides clear and convincing evidence Wife discussed inappropriate topics in front of the parties' daughters and encouraged the daughters' lack of respect toward their father. Furthermore, the family court observed Wife's testimony at this rule to show cause hearing, as well as a prior rule to show cause hearing, and found Wife to not be credible. Consequently, we affirm the family court as to its finding of contempt on this point.

5. As to attorney's fees, based on our disposition of the prior matters, we reduce the amount of attorney's fees awarded to Husband by two-thirds to \$13,333.33.<sup>1</sup> *See Myers v. Myers*, 391 S.C. 308, 322, 705 S.E.2d 86, 94 (Ct. App. 2011) (adjusting the wife's entitlement to attorney's fees based appellate court's decisions that diminished her beneficial results); *Bojilov v. Bojilov*, 425 S.C. 161, 191, 819 S.E.2d 791, 807 (Ct. App. 2018) ("The appellate court may reverse an attorney's fees award when the beneficial results achieved by trial counsel are reversed on appeal."). We therefore affirm the family court's award of attorney's fees as modified.

**AFFIRMED AS MODIFIED IN PART AND REVERSED IN PART.**

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<sup>1</sup> The \$1,500 fine payable to the family court remains in place.

KONDUROS, GEATHERS, and VINSON, JJ., concur.