

STATE OF NEW YORK  
FAMILY COURT : COUNTY OF NIAGARA

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PETER MARK DIARBAKERLY,  
Petitioner,

-against-

Docket Nos. V-03057-18  
V-03058-18  
V-03388-17  
V-03802-17

KATIE LYNN RIFORD,  
Respondent.

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KATIE LYNN RIFORD,  
Petitioner,

-against-

Docket Nos. V-00103-18  
V000592-18

PETER MARK DIARBAKERLY,  
Respondent.

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Niagara County Courthouse  
175 Hawley Street  
Lockport, New York 14094  
November 16, 2018

**B e f o r e :**

**HONORABLE ERIN P. DELABIO,**  
Family Court Judge

**A p p e a r a n c e s :**

**RANDY S. MARGULIS, ESQ.,**  
Appearing for Peter Mark Diarbakerly

**ANTHONY J. CERVI, ESQ.,**  
Appearing for Katie Lynn Riford

**JASON J. CAFARELLA, ESQ.,**  
Appearing as Attorney for Child

**P r e s e n t :**

**PETER MARK DIARBAKERLY,**  
Petitioner/Respondent

**KATIE LYNN RIFORD,**  
Petitioner/Respondent

**ASHLEY KLEINSCHMIDT, NYACR, NYRCR,**  
Official Court Reporter

E X A M I N A T I O N S

WITNESS

PAGE NUMBER

**JEANNE KRATT**

**DIRECT EXAMINATION BY MR. MARGULIS**

**33**

1                                    *(Proceedings commenced at 2:09 p.m.)*

2                                    **THE COURT:** This is the matter of Peter  
3 Diarbakerly against Katie Riford. In the courtroom I have  
4 Randy Margulis, who is the attorney for Mr. Diarbakerly. I  
5 have Anthony Cervi in the courtroom, attorney for Katie  
6 Riford. I have Jason Cafarella in the courtroom, Attorney for  
7 Children Olivia and Mason, and we are here to start our  
8 fact-finding hearing.

9                                    I do know that we have a motion that was filed  
10 by Mr. Margulis on November 8th. I understand that there was  
11 a response then filed by Mr. Cervi yesterday, and I do -- have  
12 received -- I have received the communication by Mr. Margulis  
13 that he does not want the answer by Mr. Cervi to be  
14 considered, based on the fact it was late service and not  
15 appropriate service; am I correct?

16                                   **MR. MARGULIS:** Your Honor, you took the words  
17 right out of my mouth.

18                                   **MR. CERVI:** At this point he would say late  
19 service. We did --

20                                   **THE COURT:** You served him personally, but  
21 yesterday?

22                                   **MR. CERVI:** Yes, Your Honor, and if need be,  
23 I'll address that.

24                                   **THE COURT:** Okay. I guess, let me just be  
25 realistic about it. Either you're going to give him time to

1 answer or -- either you get your time to respond to his  
2 answer, so we don't do anything with it today -- the motion  
3 today, which I know you want something done with the motion  
4 today, because next time you come back here will be in about  
5 10 days.

6 **MR. MARGULIS:** So there's some timeliness  
7 issues, with regard to the relief that we're seeking.

8 **THE COURT:** Right.

9 **MR. MARGULIS:** I won't -- I know you don't want  
10 to take a lot of time on this. With respect to the issuance  
11 of the subpoenas, Mr. Cervi issued a subpoena to Verizon  
12 seeking phone records pertaining to my client, including text  
13 messages, things like that, as well as his own client's. So  
14 my motion seeks to quash that portion of the subpoena that  
15 relates to my client. I believe that time is of the essence  
16 to be heard on that issue, because if we wait to come back in  
17 whatever -- November 26, the subpoena might have already been  
18 acted upon and complied with by Verizon, and Counsel and his  
19 client will be sitting on records that I don't want them to  
20 have.

21 **THE COURT:** So either you're waiving his  
22 insufficient time of serving you, so that I can hear this  
23 motion, and you let me rule on it, or we come back -- I don't  
24 know --

25 **MR. MARGULIS:** So --

1                   **THE COURT:** -- next week, to finish up the  
2 motion date so you have proper time to respond to his  
3 response.

4                   **MR. MARGULIS:** Okay. So --

5                   **THE COURT:** Up to you.

6                   **MR. MARGULIS:** -- just so I'm clear, for  
7 purposes of the record.

8                   **THE COURT:** Yes.

9                   **MR. MARGULIS:** My application to deny his late  
10 service, the remedy would be, you would be adjourning the  
11 motion to give me time to -- rather than -- unless I consent  
12 otherwise, rather than proceeding on the motion today, absent  
13 my written response?

14                   **THE COURT:** Correct. So if you want to respond  
15 orally today, if you feel confident enough that that can be  
16 handled today by oral response, then you're consenting to  
17 waiving any kind of objection to his late service; or I bring  
18 you back next week where you do respond in writing to his  
19 answer; or you just trust that I get what's going on here and  
20 I can answer this motion short of your response to his.

21                   **MR. MARGULIS:** I'll take your number three, Your  
22 Honor.

23                   **THE COURT:** Okay.

24                   **MR. MARGULIS:** I trust that the Court is  
25 aware -- probably well aware by now -- of the nature and

1 circumstances of what's been going on, so on that basis -- and  
2 mainly, in the interest of the timeliness issues here, I will  
3 waive -- unless my client tells me he doesn't consent to that,  
4 but I believe he's agreeable. I will waive that.

5           Could I just make one small request? To the  
6 extent -- could we go ahead and let you rule on the motion;  
7 but in the event that I might have to -- just to protect a  
8 record here, after the fact, can I have a little time to  
9 submit a written response -- or reply, rather, should I deem  
10 it necessary, or do you prefer not to?

11           **THE COURT:** If you don't like my answer, is what  
12 you're saying?

13           **MR. MARGULIS:** No. No. No. I see what you're  
14 saying. I see what you're saying.

15           **THE COURT:** If you don't like how I'm ruling on  
16 this?

17           **MR. MARGULIS:** Just to protect the record.

18           **THE COURT:** I'm sorry.

19           **MR. MARGULIS:** So I can submit a written  
20 response, saying, we object and deny the allegations. It  
21 wouldn't be a whole 50-page affidavit. It would be, like,  
22 four sentences, probably, to protect the record in the event  
23 we go to Rochester, so they see there's a written denial by my  
24 client.

25           **THE COURT:** Correct. I understand.

1                   **MR. MARGULIS:** That's basically it.

2                   **THE COURT:** So subsequent to my ruling, just so  
3 that you have paperwork filed with the Court in the file, yes.  
4 I don't have a problem with you subsequently replying to it --

5                   **MR. MARGULIS:** Okay.

6                   **THE COURT:** -- in terms of your objections or  
7 whatever.

8                   **MR. MARGULIS:** Yeah.

9                   **THE COURT:** Pretty much putting in writing what  
10 you feel about his response.

11                   **MR. MARGULIS:** And it would be, literally, to  
12 have something in writing saying, deny, deny.

13                   **THE COURT:** That's fine.

14                   **MR. MARGULIS:** Thank you, Your Honor.

15                   **THE COURT:** With respect to the motion, did you  
16 want me to rule on it or -- I want you to be able to rest on  
17 your papers. I have a 40-page response. I have a 40-page  
18 motion, alongside of other motions from the two of you that  
19 are more than 20-something pages long each, again. You've  
20 taken a lot of opportunity in these motions to give me what is  
21 going to be testified to in this hearing, and it's multiple  
22 things and consistent things I've been hearing over and over  
23 and over again. The only thing new to the pages are what  
24 happened recently, in the last couple weeks.

25                   **MR. MARGULIS:** Correct.

1                   **THE COURT:** The November 4th and 3rd incident  
2 that happened at the Cheektowaga Police Department.

3                   **MR. MARGULIS:** Sure.

4                   **THE COURT:** That's the only newness to it. They  
5 are --

6                   **MR. MARGULIS:** Sure.

7                   **THE COURT:** -- new facts, not new issues. These  
8 parties don't get along. They can't agree on exchanges. They  
9 can't agree on timeframes. So with respect to these motions,  
10 nothing has changed. Postures have not changed. It's new  
11 facts and circumstances that keep adding and compiling on as  
12 to what the original issues have been with these parties.

13                   Can I rule on this or --

14                   **MR. MARGULIS:** So Your Honor, I would have no  
15 objection to the Court -- I'll rest on my papers. I have no  
16 objection to the Court ruling on the basis of the submissions.  
17 I don't want to steal the spotlight, though. I want to make  
18 sure if there's anything Mr. Cafarella wants to inject before  
19 you render a decision, I want to give him an opportunity.

20                   **THE COURT:** Which means Mr. Cervi should have  
21 something to say.

22                   Go ahead, Mr. Cervi.

23                   **MR. CERVI:** Thanks, Your Honor. Very briefly, I  
24 rest on my papers, as well, Judge. The only thing I would  
25 like to say is, in my papers, Judge, I recommended -- and I



1 know my client is fully on board with -- monitored exchanges.

2 **THE COURT:** I know.

3 **MR. CERVI:** I've never seen a case that is  
4 screaming more for being monitored. I asked the respondent  
5 and received no response. I beg the Court, if you would,  
6 please order the monitored exchange. And my client does not  
7 have a job. If it could be, obviously, at the expense of  
8 the -- the petitioner, Judge, that's all I would ask. I think  
9 it would cure a lot of these problems.

10 **THE COURT:** Okay. And Mr. Cafarella, anything  
11 you want to speak to on any of the motions?

12 **MR. CAFARELLA:** Judge, with regards to the  
13 motion filed by Mr. Margulis, I have no objection to the  
14 relief requested in items one and two of the motion. It makes  
15 sense to set times.

16 As for three, I don't have a position.

17 As for four, Judge, I guess I don't have a -- an  
18 objection, if a judicial subpoena was granted with regards to  
19 the Cheektowaga Police Department.

20 **THE COURT:** Let me rule on this, quickly, so we  
21 can get started. I think what needs to be happening is you  
22 guys really need to get this hearing started, and hopefully  
23 bring it to completion as quickly as possible. These parties  
24 have been here for well over a year now. It's been a 2017  
25 filing on some of these petitions, except for the newly filed

1 petition, so --

2 With respect to referring to the notice of  
3 motion by Mr. Margulis, on page 1, paragraph 1, prohibiting  
4 members of the respondent's family of being at exchanges, what  
5 I will agree upon is at the exchanges, father can have one of  
6 his parents, and mother can have one of her parents. No  
7 brothers, no siblings. I don't even know why siblings would  
8 have been at that exchange, except for the fact I understand  
9 that, probably, Mr. Diarbakerly, I'm going to hear his sister  
10 came in to also have visitation. There's no reason for her to  
11 be at the exchange, as well.

12 I am going to establish specific times, so we're  
13 on this other -- what is it, every other weekend that father  
14 comes in from Massachusetts to do his visitation?

15 **MR. MARGULIS:** Well, the order -- your order  
16 says alternate weekends.

17 **THE COURT:** Right.

18 **MR. MARGULIS:** Right now, the way it's ordered,  
19 is six hours each day.

20 **THE COURT:** Okay. So we're going to do 11:00 to  
21 5:00 every weekend -- every -- every other Saturday, every  
22 other Sunday, so alternate weekends.

23 **MR. MARGULIS:** Um --

24 **THE COURT:** So Saturday 11:00 to 5:00, Sunday  
25 11:00 to 5:00.

1                   **MR. CAFARELLA:** Beginning when, Judge?

2                   **THE COURT:** Beginning --

3                   **MR. CERVI:** Tomorrow.

4                   **MR. MARGULIS:** Tomorrow is the next scheduled  
5 access, because it's alternate weekends, according to your  
6 order.

7                   **THE COURT:** Yeah.

8                   **MR. MARGULIS:** Last access was two weekends ago,  
9 so we are expecting access --

10                  **THE COURT:** This weekend.

11                  **MR. MARGULIS:** -- to occur tomorrow, from 11:00  
12 to 5:00, and Sunday from 11:00 to 5:00.

13                  **THE COURT:** Okay.

14                  **MR. MARGULIS:** Tomorrow, being November 17th.

15                  **THE COURT:** All right. Question. I saw in your  
16 papers there is a particular hotel that your client  
17 consistently uses; is that correct?

18                  **MR. MARGULIS:** Yes.

19                  **PETER MARK DIARBAKERLY:** Yes. Unless  
20 it's -- unless it's booked.

21                  **THE COURT:** What hotel is it?

22                  **MR. MARGULIS:** What's the name? It's the one by  
23 UB?

24                  **PETER MARK DIARBAKERLY:** Staybridge Inn.

25                  **THE COURT:** Staybridge Inn.

1           Mr. Cervi, how close does your client live to  
2 that? There was a Niagara Falls address given. She -- you  
3 deny -- she doesn't live in the Falls; she lives in, what,  
4 Wheatfield.

5           **MR. CERVI:** Yes, she does, Judge.

6           I'm sorry, what was the location?

7           **THE COURT:** It's a Staybridge, by the UB campus.

8           **MR. CERVI:** I don't think my client cares,  
9 either way. Are you familiar with the Staybridge by UB? If  
10 we know the address, we can make it happen.

11           **THE COURT:** We'll do exchanges at -- let's do  
12 exchanges at the Staybridge, until we're done with trial.  
13 We're not going to go to all these different places, and  
14 they're not going to be left for the parties to agree and  
15 arrange, because they can't agree and arrange anymore. I  
16 can't micromanage their lives every day. I'm not with them  
17 every day. We're going to do the exchanges at the Staybridge.

18           With respect to the subpoena on the Verizon  
19 records, here is my question: Mr. Cervi, with respect to you  
20 being able to just subpoena your own client's records, isn't  
21 that sufficient enough? Well, let me start off by saying  
22 this -- let me back up.

23           I would be willing to do -- I am willing to not  
24 quash the full subpoena, but to limit the subpoena to only  
25 records, text messaging, and/or phone calls, between the

1 parties only.

2 My thought would be that if I'm going to limit  
3 it to that, why isn't it sufficient enough for you to just get  
4 your own client's records; that would show the transactions  
5 between her and the father. I don't know what would be on the  
6 father's phone that wouldn't be on the mother's phone, except  
7 for to show a difference of deleting a message or something of  
8 that nature.

9 **MR. CERVI:** Your Honor, there is one additional  
10 issue. There's text messages between the prior supervisor and  
11 the father. We would suggest -- and I have proof already,  
12 Judge, the supervisor had mistakenly text messaged my client a  
13 message that was meant for Mr. Diarbakerly. In that message  
14 she calls my client Miss Miserable. With that, Judge, I think  
15 it seriously calls into question the -- it was supposed to be  
16 a neutral supervisor.

17 **THE COURT:** Let me -- let me -- let me -- and  
18 that gives me the opportunity to clarify something on the  
19 record, as well. One, that is not a supervisor that was  
20 selected by the Court, nor ordered by the Court. That was an  
21 agreement between the parties, through multiple and consistent  
22 pretrials.

23 What Mr. Margulis did -- to move this matter  
24 along and to show good faith -- he proposed Jeanne Kratt as a  
25 monitored supervisor, to at least do some supervising and to

1 be able to do some reporting to the Court. That was agreed  
2 to -- upon, by the parties and the lawyers. I did an order  
3 then memorializing what the parties had consented and agreed  
4 to. Of course, as being the Court, I would like to have an  
5 independent social worker. That was a selection by  
6 Mr. Margulis. It was a selection by his client, and they both  
7 agreed to -- well, he agreed to pay for her to be there to  
8 observe.

9                   The characterization in your papers that this  
10 was a Court-ordered -- I did not Court order it. I  
11 Court-ordered it in the sense that I memorialized an agreement  
12 between the parties.

13                   **MR. CERVI:** Understood.

14                   **THE COURT:** That was an understanding between  
15 the parties and the lawyers.

16                   **MR. CERVI:** Okay.

17                   **THE COURT:** It was supposed to act as an  
18 independent report, to me, to help move this case along. I  
19 did not select her. Okay? Therefore, you're here to live  
20 with that.

21                   **MR. CERVI:** No question.

22                   **THE COURT:** What you need to do -- I see it as,  
23 in testimony, or whenever Ms. Kratt is here testifying --  
24 which I assume she would be -- that would be your opportunity  
25 to, at least, cross-examine her and show if she had a bias or

1 not.

2 I don't feel as though whatever text messaging  
3 that went on between her and Mr. Diarbakerly has any -- I  
4 don't feel they are important enough to be here in this Court.  
5 What she felt about Ms. -- what she thinks about Ms. Riford or  
6 whatever, I don't find that to be important enough, as opposed  
7 to her as a social worker here reporting to me what she's  
8 supervised and observed as a father interacting with his  
9 children. Okay?

10 **MR. CERVI:** Fair enough, Judge. Thank you.

11 **THE COURT:** All right. With respect to the cell  
12 phone records, I'm not going to quash the full subpoena, but I  
13 will limit that to only conversations between -- and I think  
14 what you need to do is identify the exact cell phone numbers  
15 that you want to see the records from. I think Verizon can  
16 minimize it to that, only; I'm hoping.

17 I don't know if you want to put on the  
18 record -- someone has to get me an -- on the record, stating  
19 what it is that I'm limiting here, so you can get it to  
20 Verizon. I'm sure you will want to do that, Mr. Margulis.

21 **MR. MARGULIS:** Sure.

22 **THE COURT:** So I don't know, do we want to put  
23 on the record, what are the specific cell phone numbers we're  
24 speaking of that Verizon releases information to, only?

25 **MR. CERVI:** I have it in my subpoena, Judge.

1 The phone numbers, I believe, are -- 617-721-1377 is  
2 Mr. Diarbakerly's, and the phone number for my client was  
3 781-296-9654.

4 **THE COURT:** Okay. So it's going to be  
5 communication -- some text messages, solely between the  
6 parties.

7 I'm not going to sign a judicial subpoena duces  
8 tecum, because I don't think I need one with the Cheektowaga  
9 Police Department. That should be public record. I'm not  
10 going to -- I guess if the question comes up, if Mr. Margulis  
11 wants to quash that for any other reason, I'm -- that's  
12 denied, because that's public record.

13 **MR. MARGULIS:** Judge, I -- sorry to interrupt.

14 **THE COURT:** Yeah.

15 **MR. MARGULIS:** May I?

16 **THE COURT:** Yeah.

17 **MR. MARGULIS:** I'm not seeking to quash it.

18 **THE COURT:** You want --

19 **MR. MARGULIS:** I want it.

20 **THE COURT:** You want it? I'm sorry. Excuse me.

21 **MR. MARGULIS:** It's my understanding, because  
22 they're a governmental agency, they require it be a judicial  
23 subpoena.

24 **THE COURT:** No.

25 **MR. MARGULIS:** Even the subpoena --



1                   **MR. CERVI:** Judge, I --

2                   **MR. MARGULIS:** -- gets served on the town.

3                   It --

4                   **THE COURT:** What is the subpoena for, records  
5                   for what happened, or the video?

6                   **MR. MARGULIS:** Both.

7                   **MR. CERVI:** Both. And Your Honor, I hate to  
8                   agree with Mr. Margulis, but -- that he's right, but it is a  
9                   municipality. It is considered a municipality.

10                  **THE COURT:** Can I highlight that on the record,  
11                  that you agreed on that?

12                  **MR. MARGULIS:** Have you got the date and time?

13                  **THE COURT:** Okay. No. I don't have a problem  
14                  with that. It's just becoming, I think, more of the  
15                  responsibility of the Court to subpoena stuff, and everybody  
16                  else making that a problem. It's to the point you can't get  
17                  school records without judicial subpoenas.

18                  **MR. MARGULIS:** I can't agree more on that with  
19                  you, Judge.

20                  **THE COURT:** As long as you don't disagree with  
21                  that, I will sign that. Mr. Margulis, I don't know if you  
22                  submitted it with your papers.

23                  **MR. MARGULIS:** I think I have. If I can look  
24                  through my pile, I might have --

25                  **THE COURT:** I have it. It's here. I'm sorry.

1 It's --

2 **MR. CERVI:** Judge, I would ask, as well -- I  
3 join in in his request, because I think there's information  
4 that will be garnered from those records that will be  
5 important for this trial.

6 Your Honor, I'd ask that Officer Scapillato be  
7 included in that subpoena. He was present during the exchange  
8 and was a witness.

9 **THE COURT:** Okay. I don't have a problem with  
10 that.

11 **MR. CERVI:** Thank you.

12 **THE COURT:** I have a problem with the fact that  
13 this Court now has to, really, interfere with a lot of these  
14 subpoenas. It was just everybody trying to CYA themselves.  
15 Anyways, that's my little commentary. I will sign that, then,  
16 as well.

17 **MR. MARGULIS:** All right. Then I'll have to  
18 change the subpoena, then. I'll send it to you.

19 **THE COURT:** Okay. With respect to the monitored  
20 exchange, at this point in time, Mr. Cervi, I'm just denying  
21 the motion based on reality, which is, you get into a  
22 monitored exchange program, one, you -- the parties are driven  
23 to work within their timeframes; two, I don't even know what  
24 the waitlist is; and three, I think these parties have to  
25 start moving forward with their relationship.

1           As much as they completely disagree with how  
2 life is, and they just don't care for each other, they have  
3 been in a, close to over nine-year relationship, that has been  
4 distant for a very long period of time. They don't live near  
5 each other. They only have to exchange -- see each other or  
6 deal with each other every other weekend for the exchange of  
7 the children, and I feel that would be such an unnecessary  
8 delay, and right now, would interfere with visitation. And  
9 right now I feel as though visitation has been going at a good  
10 pace and smoothly enough that I just don't want to get into a  
11 monitored program at this point in time.

12           I think the parties need to work this out. They  
13 need to have just one of their parents available, and that's  
14 it. And to be done in the Staybridge parking lot in front of  
15 the main doors, so if any altercation is, again, happening,  
16 hopefully there's video and/or cameras there, if really that  
17 needed to be brought up as an issue, but the parties have to  
18 start being able to exchange these children without incident.

19           **MR. MARGULIS:** Can I ask you for one brief  
20 directive, Your Honor?

21           **THE COURT:** What directive would that be?

22           **MR. MARGULIS:** As you know, the Court ordered  
23 that there may come occasions during which the parties meet up  
24 during the access, so the -- the baby can be breastfed.

25           **THE COURT:** Right. Stop right there. With the

1 breastfeeding -- 11:00 to 5:00, how many times does the child  
2 need to breastfeed in a six-hour period? I know this should  
3 be -- I -- at this point in time in the child's life -- who is  
4 now over a year old -- there should be some stability in terms  
5 of a -- you know, a feeding schedule, I would think. I do  
6 remember reading in these papers, multiple times, it being  
7 told to me that the child is on solid foods, as well.

8 **MR. MARGULIS:** Yes. That's my understanding.

9 **THE COURT:** So that should extend the time  
10 period of the necessity of breastfeeding in a six-hour period,  
11 so --

12 **MR. CERVI:** There's no question it extends the  
13 time, Judge, but the child is breastfed on demand. It's -- I  
14 mean, it's a legitimate --

15 **THE COURT:** It is legitimate. I never  
16 questioned that.

17 **MR. CERVI:** Judge, just so you know, I mean,  
18 since birth, this has been taking place. It's not something  
19 that was created so as to screw with his access. That being  
20 said, the child becomes ornery when the child is not eating  
21 during a timeframe.

22 My client has said -- and you'll see, this is  
23 going to come out in the evidence, as long as the child is  
24 happy, that's fine. But if the child needs to be fed, bring  
25 the child; you know, we need to exchange. So it's -- it's

1 been going about three hours. I think there's times where  
2 they've gone four hours, but --

3 In any event, my client, too, Judge, she goes  
4 wherever they ask her to go. She's not, like, we'll meet  
5 here. Where are you? I'll come pick up the child. She's not  
6 trying to make things difficult as it pertains to the access,  
7 so I -- I think that we're asking, Judge, that that please  
8 stay in the Court's order. My client is not looking to abuse  
9 it; just trying to make sure the child is fed and  
10 it's -- again, it's determined by the child.

11 **MR. MARGULIS:** I wasn't going to ask for that,  
12 Judge.

13 **THE COURT:** I'm sorry.

14 **MR. MARGULIS:** I'm not asking you to take that  
15 away. What I was going to ask is -- what happens is, when  
16 they go -- let's say -- it's 11:00 to 5:00. Let's say it's  
17 3:00, and they meet up again to exchange the baby for  
18 breastfeeding. My understanding is, what happens is,  
19 everybody gets out of their cars.

20 **THE COURT:** Okay.

21 **MR. MARGULIS:** Olivia gets out of the car and  
22 runs to mommy or grandma, and then, you know -- and you've  
23 dealt with many cases --

24 **THE COURT:** I know.

25 **MR. MARGULIS:** -- where there's a, quote,

1 unquote, interruption in the continuation of access. I would  
2 ask that Olivia not be expected to get out of the car and go  
3 say hi to mom and hi to grandma. It's dad's time, even though  
4 he's facilitating the breastfeeding.

5 **THE COURT:** Let me ask this -- just trying to  
6 get through this -- the Staybridge, does it have a pool? Is  
7 there --

8 **PETER MARK DIARBAKERLY:** Yeah.

9 **THE COURT:** Is there the ability to stay there?

10 **PETER MARK DIARBAKERLY:** Yes.

11 **THE COURT:** I mean, I don't mean to be pushy  
12 about what you should be doing during your access. I know you  
13 should be able to take your children places to do things. My  
14 thoughts are this: if at a time -- like, what you should be  
15 doing is -- what I'm thinking is that back and forth only at  
16 the Staybridge, so we're not -- so I'm not hearing, in  
17 motions, that there's this big chase and this runaround, and  
18 I'm here, and now I'm going to go here. Let's just bring this  
19 back to basics. It's just exponentially gotten out of  
20 control.

21 **MR. MARGULIS:** Respectfully, Judge, he shouldn't  
22 be a prisoner in the Staybridge hotel.

23 **THE COURT:** You're absolutely right, but until  
24 we get through this trial, Mr. Margulis, everybody wants me to  
25 micromanage their life, but then, when I start micromanaging

1 their lives, they don't want me to.

2 I know you don't want me to hold your client  
3 prisoner to being at a specific place during access, to  
4 disadvantage him; however, I'm trying to cut down on the  
5 craziness.

6 **MR. MARGULIS:** But no --

7 **THE COURT:** To me, if I can minimize where  
8 they're going to be at and what they're doing, it will  
9 minimize 40-page paper motions, that have been multiple  
10 motions since the beginning of these proceedings.

11 **MR. MARGULIS:** But nobody is -- nobody is  
12 disputing right now where they meet to exchange the baby.

13 **THE COURT:** Well, there was something in  
14 Mr. Cervi's papers about the big runaround and the big chase.

15 **MR. MARGULIS:** Well --

16 **MR. CERVI:** And that was one other thing I  
17 wanted to address, Judge, and I don't -- I understand private  
18 investigators are utilized in cases. That's not an issue.  
19 I'd ask that they direct their private  
20 investigators -- they're chasing my client. That's why her  
21 brother had to come. He was studying at the time. He had to  
22 come and --

23 **THE COURT:** Well, I'm not sure about that kind  
24 of accusation, but however -- however, I'm trying to minimize,  
25 again, the craziness, until we get done with this trial.

1                   My thoughts are this: Mr. Margulis, it's only a  
2 couple more weekends until we're done with this trial, unless  
3 you get more dates after this trial.

4                   **MR. MARGULIS:** Not according to him.

5                   **THE COURT:** My thoughts are this: Can't  
6 Mr. Diarbakerly stay somewhere around the hotel so  
7 that -- look, the exchange can happen consistently at the  
8 hotel, so we're not questioning, where are we picking up the  
9 kids. We're not questioning on where to go back and forth.

10                  **MR. MARGULIS:** I hate --

11                  **THE COURT:** And by the way, I find hotels to be  
12 soothing and fun places to be at, so the child could be  
13 swimming or doing something if there's a pool.

14                  **MR. MARGULIS:** I'm not going to even go there,  
15 because that's going to invite all other kinds of issues. I  
16 just respectfully have to disagree with it. I'm not going to  
17 give you a hard time, though. I just think it's unfair to my  
18 client.

19                  **THE COURT:** I get it.

20                  **MR. MARGULIS:** It's significantly unfair to my  
21 client --

22                  **THE COURT:** Then, on the same token, you are  
23 complaining --

24                  **MR. MARGULIS:** -- but --

25                  **THE COURT:** -- that when we get into the parking



1 lot and Mason has to go with mom, Olivia is getting out of the  
2 car -- people are getting out of the car, and it's interfering  
3 with your client's visitation.

4 **MR. MARGULIS:** So --

5 **THE COURT:** I can direct all I want and say  
6 everything I want in this courtroom about people not getting  
7 out of cars. You're not going to stop a nine year old who is  
8 in her car with her dad who sees her mom in the middle of a  
9 parking lot. When you see the child exchange -- the other  
10 child being exchanged for a breastfeeding necessity, to stop  
11 her from wanting to get out of the car and go see her  
12 mother -- we either drill this down to where the exchange of  
13 Mason is just between father and mother, and Olivia stays with  
14 his mother or sister at whatever establishment or place that  
15 they're at, or --

16 **MR. MARGULIS:** I'm fine with that.

17 **THE COURT:** -- you go with my solution, which is  
18 stay at Staybridge. Let them swim. Let them do things at the  
19 hotel, and make this exchange of Mason a little bit less  
20 involved.

21 **MR. MARGULIS:** Respectfully, I'm going to  
22 disagree. I'm not going to challenge it. I don't think it's  
23 fair to the kids.

24 **THE COURT:** I don't think so, either.

25 **MR. MARGULIS:** The activities -- they go to the

1 zoo, Canalside. There's a lot of things to do in the area, as  
2 you know, that now, because of this issue -- so now my client  
3 can't participate in those types of activities.

4 **THE COURT:** Let's go back to basics.

5 **MR. MARGULIS:** Then what's going to happen,  
6 Judge -- then we're going to have an in camera, and Jason  
7 Cafarella is going to meet with the child, and the child is  
8 going to say, I don't like staying with my dad. It's so  
9 boring. We don't do anything. I sit at the hotel and I see  
10 people with their Zubaz on, because they're in town for the  
11 Bills' game. That's what's going to happen.

12 **THE COURT:** Hypothetically speaking, if these  
13 parties had a lifestyle where they lived together, believe me  
14 you, that's how they would run their life. Their life would  
15 be driven around whether the child has to feed. If you're in  
16 the midst of something, the child would feed at any time the  
17 child needs to.

18 **MR. MARGULIS:** Right.

19 **THE COURT:** It would be effected by everybody.  
20 So how do I say, now, the child can't be made --

21 **MR. MARGULIS:** I'm not requesting that.

22 **THE COURT:** I know you're not requesting it, but  
23 you're requesting me to -- to --

24 **MR. MARGULIS:** I'm just -- all I was  
25 requesting --

1                   **THE COURT:** -- make it easy --

2                   **MR. MARGULIS:** Maybe I'll withdraw the request.  
3 All I was requesting was that the other child not be expected  
4 to get out and --

5                   **THE COURT:** Well, there shouldn't be --

6                   **MR. MARGULIS:** I think we've had other cases  
7 this issue came up.

8                   **THE COURT:** That's --

9                   **MR. MARGULIS:** I would assume that's how the  
10 Courts typically rule.

11                   **THE COURT:** That's an exception. The child  
12 shouldn't have to get --

13                   **MR. MARGULIS:** Yeah.

14                   **THE COURT:** It's just a natural expectation.  
15 How do I stop it, but for being there myself? I don't know.

16                   **MR. MARGULIS:** What do you do about it?

17                   **THE COURT:** It's going to happen. It's a  
18 natural thing. It's natural, so --

19                   **MR. MARGULIS:** I'm withdrawing my request, then,  
20 because I --

21                   **THE COURT:** You want the -- so you want it to  
22 continue the way it is?

23                   **MR. MARGULIS:** Yes. Yes. They will deal with  
24 it. They will just have to deal with it, unless they work it  
25 out by themselves, which wouldn't be such a terrible thing for

1 once, but otherwise, they will continue doing -- it's not a  
2 motion that's before the Court. I was just asking for it as a  
3 practical measure. I hereby withdraw that request. It's not  
4 part of any motion on the table --

5 **THE COURT:** Okay.

6 **MR. MARGULIS:** -- before the Court, so I'm going  
7 to consider that issue withdrawn, and my verbal request  
8 withdrawn, as well.

9 **THE COURT:** All right.

10 **MR. CERVI:** Your Honor --

11 **THE COURT:** I'll leave it to the parties to try  
12 to figure this out, but the child does -- it's a natural thing  
13 for a child to breastfeed at age one.

14 **MR. MARGULIS:** I'm not complaining about that.

15 **THE COURT:** I know you're not.

16 **MR. MARGULIS:** Yeah.

17 **THE COURT:** I know. Mr. Cervi has questioned  
18 it. He's put it into question.

19 **MR. MARGULIS:** Okay.

20 **THE COURT:** I want to make sure he understands,  
21 there's no decision. No judgment about that.

22 **MR. MARGULIS:** Sure.

23 **THE COURT:** As a matter of fact, it's a very  
24 viable thing. The child should feed.

25 **MR. MARGULIS:** Of course.

1                   **THE COURT:** If the parties lived together, there  
2 would be no question about it.

3                   **MR. MARGULIS:** And --

4                   **THE COURT:** These parties are going to have to  
5 figure out how to exchange this child without so much  
6 interference going on at the time of the exchange.

7                   Go ahead, Mr. Cervi. Anything else you need to  
8 say? If not, I think we're done with this motion, and let's  
9 start the hearing.

10                  **MR. CERVI:** Just two things, Judge. The first  
11 is, my client has shown me text messages -- apparently, she's  
12 going out of town this weekend for her birthday, and they had  
13 confirmed this via text message before, that that was going to  
14 happen. It's -- I've got the text messages. My client is  
15 going to Ohio, so -- that was the first thing. I wanted to  
16 make sure it was brought up.

17                  **THE COURT:** Who is the text message going to and  
18 where is -- what is the response to it? When did the text  
19 message go?

20                  **MR. CERVI:** September 13th, he's confirming for  
21 next Saturday and Sunday visit, the 22nd and 23rd. My client  
22 responds, more than happy to accommodate that. Also, please  
23 note the children have plans for the weekend of 11/17 and  
24 11/18 and will not be available. Thank you. His response,  
25 okay. Thanks.

1                   **THE COURT:** And you're denying, Mr. Diarbakerly,  
2 that that text messaging ever occurred?

3                   **PETER MARK DIARBAKERLY:** No. I'm not  
4 denying -- I'm not denying that.

5                   **THE COURT:** I don't want you to say anything  
6 unless Mr. Margulis --

7                   **MR. MARGULIS:** You can speak.

8                   **THE COURT:** If there was an exchange of text  
9 messages where you agree to, at least, swap a weekend --

10                   **PETER MARK DIARBAKERLY:** All my text messages  
11 were, okay, thanks, to her. Pretty much what -- and you  
12 can -- I can pull out my phone. It was referring to the visit  
13 that weekend. It was not referring to that, the --

14                   **THE COURT:** But it was proposed to you that  
15 there's a weekend where you're supposed to be visiting and she  
16 would like to change it?

17                   **PETER MARK DIARBAKERLY:** She -- I mean, it's  
18 been a problem to -- to schedule these visitations.

19                   **THE COURT:** I know, because you're coming from  
20 out of town. I don't want to deal with that right now.

21                   **PETER MARK DIARBAKERLY:** Okay.

22                   **THE COURT:** If you guys can't exchange them and  
23 it's every other weekend, something is -- I --

24                   Mr. Cervi, it's an order.

25                   **MR. CERVI:** It is, Judge, but the -- he had

1 asked for the 22nd and 23rd, because his uncle had died, and  
2 not that it's tit for tat, but she's given him other times.  
3 She's trying to accommodate his schedule. These plans, her  
4 and her family are going to Ohio this weekend, Judge.

5 **KATIE LYNN RIFORD:** Can I say something?

6 **THE COURT:** I don't want to waste any more time  
7 on this. Let's get started with the hearing.

8 **KATIE LYNN RIFORD:** Can I say something?

9 **THE COURT:** I think the parties should work it  
10 out. I'm not going to waste any more time on it. We have to  
11 start this hearing. I've got three hearing dates, one being  
12 today, and we're already 20 to 3:00 right now. Let's get  
13 started, and maybe by 4:30, the parties will decide to walk  
14 out in that hallway and decide if they can figure out their  
15 access this weekend.

16 All right. Go ahead, Mr. Margulis. It's  
17 your -- you begin.

18 **MR. MARGULIS:** Thank you, Your Honor. I'd like  
19 to call, as my first witness, Jeanne Kratt.

20 **THE COURT:** Okay.

21 **MR. MARGULIS:** Want me to get her? I think  
22 she's in --

23 **THE COURT:** We'll get her. We'll get her sworn  
24 in and talk about openings.

25 **MR. MARGULIS:** Do you want her to be present

1 for --

2 **THE COURT:** Can you hold her in the hallway for  
3 one second?

4 **COURT OFFICER:** Sure.

5 **THE COURT:** I apologize. We'll start the  
6 hearing. I'm sorry.

7 Mr. Margulis, you begin. And I don't know if  
8 anybody wants to do opening statements.

9 **MR. MARGULIS:** I'll waive.

10 **THE COURT:** Okay. Mr. Cervi?

11 **MR. CERVI:** Judge, I would waive an opening  
12 statement.

13 **THE COURT:** Thank you. Mr. Cafarella?

14 **MR. CAFARELLA:** Judge, I just have one statement  
15 to make. Judge, I represent two children, and my youngest  
16 child is Mason, and he's one year old. Based on his age, I'm  
17 going to substitute judgment, because he lacks capacity for  
18 knowing and voluntary considered judgment.

19 **THE COURT:** Okay.

20 **MR. CAFARELLA:** With regards to Olivia, she's  
21 eight years old, and her stated wishes are that she does not  
22 want to have further access with her father.

23 **THE COURT:** Okay.

24 **MR. CAFARELLA:** However, I am substituting  
25 judgment, because to follow the child's wishes, Judge, would



1 be tantamount to severing her relationship with her father.  
2 That would not be in her best interests and would  
3 result -- will likely result in a substantial risk of imminent  
4 serious harm to the child.

5 **THE COURT:** Okay.

6 **MR. CAFARELLA:** Thank you, Judge.

7 **THE COURT:** Thank you. And then you're going to  
8 order -- we're going to have a -- a Lincoln hearing at the end  
9 of all this?

10 **MR. CAFARELLA:** For Olivia, only. Yes, Judge.

11 **THE COURT:** Okay. Raise your right hand.

12 **JEANNE KRATT,** called herein as a witness, being  
13 duly sworn, testified as follows:

14 **THE COURT:** Thank you. Have a seat. Just for  
15 the record, say your name. Spell it out, and then just  
16 where -- I would just put an address on of where your business  
17 is.

18 **THE WITNESS:** Okay. Jeanne Kratt, J-E-A-N-N-E,  
19 K-R-A-T-T, address is 43 Court Street, Mezzanine Level,  
20 Buffalo, New York 14202.

21 **THE COURT:** You may ask, Mr. Margulis.

22 **MR. MARGULIS:** Thank you.

23 **DIRECT EXAMINATION BY MR. MARGULIS:**

24 Q Ms. Kratt, good afternoon.

25 A Good afternoon.

1 Q Would you please state for the Court what your  
2 occupation is?

3 A I'm a social worker.

4 Q And what is your specific title?

5 A When I work in the Courts I do supervised visits, home  
6 studies, and mediations for custody/visitation. In the past  
7 I've done housing mediations, anything over in City Court, but  
8 mainly I'm in Family Court.

9 Q And can you describe for the Court, please, what your  
10 educational experience consists of?

11 A I have my Master's Degree in Social Work. I have many  
12 hours of training in domestic violence, parent coordination,  
13 divorce mediation, custody/visitation mediation, neighborhood  
14 disputes, conflict resolution.

15 Q And by the way, where did you obtain your MSW?

16 A At the University of Buffalo.

17 Q And would you please describe your -- the extent of  
18 your work experience -- related work experience?

19 A Yes. I've been in the Courts for 20 years doing  
20 mediations, parent coordination, supervised visits, and home  
21 studies for various Judges and attorneys, mainly in Erie  
22 County Family Court, but I have also been in Niagara County  
23 Court.

24 Q Specifically with respect to your experience in the  
25 area of supervised visitations, can you tell us,

1 approximately, how many cases you've been involved with over  
2 the past 20 years with relation to supervised visitation  
3 issues?

4 A I would say, approximately, 150.

5 Q And with respect to your training, other than your  
6 education and your master's degree from UB, have you attended  
7 any educational type settings with respect to your occupation,  
8 specifically with respect, I guess, to the supervised  
9 visitation work that you do?

10 A I would have to say the conflict resolution  
11 is -- conflict resolution and parent coordination, not  
12 specifically for supervised visits. I'm not aware of anything  
13 that teaches specific to supervised visits.

14 Q Can you tell me, exactly, how are you employed? Are  
15 you a state employee? Are you self-employed?

16 A Just self-employed.

17 Q During your involvement in this case have you been  
18 paid or have you charged a fee?

19 A I have been paid based on charges that I have given to  
20 the father.

21 Q And what is the charge or the fee you charge for  
22 services in this case?

23 A \$75 an hour.

24 Q And would that include payment for your time in Court  
25 today?

1 A That's additional.

2 Q Can you tell me how it came about that you became  
3 involved in this case?

4 A I believe I received a phone call from Mr. Cafarella  
5 for a supervised visit, to see if I would be interested and if  
6 I had room in my schedule.

7 Q After you agreed to participate in this matter, can  
8 you tell me what -- what were the first steps, or the early  
9 steps that you took in the process?

10 A The first thing I do when I'm assigned a case is to  
11 contact both parties, see if they have any initial questions,  
12 tell them what the procedure is for my supervised visit, see  
13 if there's a Court order defining the guidelines, and meeting  
14 with the residential parent and the child or children.

15 Q You mentioned guidelines. Are there any specific  
16 guidelines that you're required to adhere to with respect to  
17 your involvement in this case that you're aware of?

18 A No, not that I'm aware of.

19 Q So when you started out -- oh, by the way, were you  
20 familiar with either of these parties before you became  
21 involved?

22 A No.

23 Q You didn't know either one of them?

24 A No.

25 Q Are you a mandatory reporter?

1 A Yes, I am.

2 Q Can you tell me, what does that mean to you? As a  
3 mandatory reporter, what, if anything, are you required to do,  
4 and under what circumstances?

5 A If I see harm being done to the child or -- or I see a  
6 bruise or a cut on a child, I would have to report it.

7 Q And specifically -- now, you said there are no formal  
8 guidelines that dictate any protocol with regard to  
9 supervising visitation?

10 A Right. If there were, they're set up by the Court  
11 ahead of time in any case that I've done, or I reach out to  
12 the Attorney for the Children to see if there's any  
13 guidelines, because sometimes I -- I don't get paperwork for  
14 cases.

15 Q So with respect to this case, can you just tell me,  
16 what do you understand your role and your function to be in  
17 this particular case?

18 A To supervise dad with the children, and to make sure  
19 that they are safe and taken care of. And on this particular  
20 case, to make sure that Mason was returned for breastfeeding,  
21 and then given back to dad for additional access once he was  
22 breastfed and he has taken a nap -- he had taken a nap.

23 Q Approximately -- or if you know, specifically, how  
24 many periods of visitation between these two parties did you  
25 supervise?

1 A I believe I had eight weekends, so 16 visits.

2 Q During those 16 occasions did you find the need to  
3 contact CPS for any reason?

4 A No, not at all.

5 Q So when you first were contacted by Mr. Cafarella and  
6 you agreed to participate in this case, did there come a time  
7 when you met the parties, initially?

8 A Not before the visit. I had -- I had a visit  
9 scheduled with mom and the children the Friday before the  
10 visit, but Court ran over on Friday, so I could not meet her  
11 and the children, so I met them Saturday morning at 43 Court  
12 Street, before the first visit.

13 Q So are you suggesting that you -- so at the first  
14 visit that you supervised, it took place on a Saturday?

15 A Yes.

16 Q And your testimony is, prior to that occasion, you had  
17 not met either of the parties, or you had not met Ms. Riford?

18 A I didn't meet either party. I spoke with them on the  
19 phone, but I did not meet them in person.

20 Q So did you meet them both in person for the first time  
21 on that Saturday morning?

22 A I did, yes.

23 Q And you said you were supposed to meet them the day  
24 before. That got cancelled because Court ran over?

25 A Yes, because I had a mediation in Court on Friday, and

1 I -- I just never know when I'm going to get out of Court, so  
2 I just didn't have time to meet with mom and the children on  
3 that Friday.

4 Q Since that time have there been any occasions where  
5 you have met with one of the parties without the other party  
6 present --

7 A No.

8 Q -- for any purposes?

9 A No.

10 Q So at the first meeting -- strike that.

11 At the first visitation period, prior to  
12 the commencement of the actual visitation, was there any  
13 discussion that you had with either of the parties?

14 A I always ask the parties if they have any questions  
15 about my role. I certainly want the -- in this case, I wanted  
16 mom to be comfortable with me, because she's handing her  
17 children off to a perfect stranger, and I understand that, so  
18 I wanted to meet with Olivia and Mason and mom to see if she  
19 had any questions, just explain my role, that I'm supposed to  
20 keep the children safe, and if at any time she wanted to text  
21 me, she could. I would text her to say that the kids were  
22 fine. I don't do that throughout my entire visits with the  
23 children. Normally, it's just that first visit I always tell  
24 the parents -- the parent who is giving me their children, if  
25 you want to know how the kids are, if I don't reach out to

1 you, first, let me know, and I -- I always say the visit was  
2 fine. If there was a problem, I immediately would -- I tell  
3 parties I would get the kids to safety, call the police, and  
4 then I would call the parent.

5 Q So is that a conversation that, in fact, took place  
6 between yourself and Ms. Riford?

7 A Yes.

8 Q You said you wanted to give her an opportunity to ask  
9 you any questions. Did she have any questions?

10 A She did not have any questions.

11 Q Did she say anything at that time about her sentiments  
12 toward the visitation in the first place?

13 A I knew that she wasn't happy with the visits being  
14 supervised.

15 Q And how did you know that?

16 A Just the fact that she didn't engage in a conversation  
17 with me. If I gave my children to a complete stranger, I  
18 would want to give them details. I'd want to ask questions.  
19 I'd want some sense of security.

20 She was -- she was fine on the phone for our  
21 Friday meeting. You know, she didn't disparage dad, but when  
22 I met her on Saturday, she was negative. She had her mother  
23 with her. Her mother said negative things about dad.

24 Q This was the Saturday that constituted the first  
25 visitation period?



1           A     Yeah.  It was -- it was very hot that day, so we went  
2 into the foyer.  We were inside the building at 43 Court  
3 Street.

4           Q     43 Court Street.  Is that Attorney Cervi's office?

5           A     It's the building.  My office is in the same building.

6           Q     Now, was Peter Diarbakerly there, too?

7           A     No.

8           Q     Okay.  So just so I'm clear, your testimony is you met  
9 on the Saturday morning immediately prior to the visitation  
10 period --

11          A     Um-hmm.

12          Q     -- at the building where Mr. Cervi's office is, to  
13 meet with mom and the kids?

14          A     Yes.  At the time, though, Dana Herrington was mom's  
15 attorney.

16          Q     Okay.  Was her office in that building, too, if you  
17 know?

18          A     I'm not aware of that.

19          Q     Okay.  So you did have conversation with Ms. Riford  
20 and possibly her mother on that occasion, on that Saturday  
21 morning?

22          A     Yes.

23          Q     And Peter was not present?

24          A     He was not.

25          Q     Okay.  So I think I asked you a few minutes ago if you

1 had any discussions -- maybe I -- I thought I asked you if you  
2 had had any discussions with one, without the other present.  
3 I thought you said no. I just want to clarify, you had a  
4 conversation with Ms. Riford alone, without dad present --

5 A Correct.

6 Q -- on that occasion?

7 A Yes.

8 Q Her mother was present?

9 A Yes.

10 Q And Olivia was present?

11 A Yes.

12 Q And Mason was present?

13 A Yes.

14 Q And you stated that Ms. Riford disparaged Peter --

15 A Yes.

16 Q -- on that occasion?

17 A Yes.

18 Q Do you remember, specifically, what she said?

19 A She and mom both made reference to dad shouldn't have  
20 supervised visits.

21 Q Okay. Did she say anything further? Did she say he  
22 shouldn't have supervised visits, or any visits?

23 A The way I took it is that he shouldn't have any  
24 visits. She was just angry.

25 **MR. CERVI:** I'm going to object, Your Honor, to

1 the speculation.

2 **MR. MARGULIS:** Well, her state of mind. I can  
3 ask her how she interpreted the -- that, as her own state of  
4 mind.

5 **THE COURT:** Sustained to that, but I -- she can  
6 testify to her observation of mother's behavior and reaction.

7 **MR. MARGULIS:** Sure.

8 **BY MR. MARGULIS:**

9 Q Was there anything else that Katie said that you  
10 concluded to be disparaging in nature, on that occasion?

11 A Not that I can recall right now.

12 Q And did you have conversation with her mother at that  
13 time, as well?

14 A I did not. She was present. She muttered some words  
15 that I couldn't make out. That was at every visit, though.  
16 There was always conversation between Katie and her mother.

17 **MR. CERVI:** Objection, Your Honor. The question  
18 has been asked and it's been answered. There's not a question  
19 out there right now.

20 **THE COURT:** All right. I'll just direct that  
21 the witness just answer what's being asked. Sustained.

22 **MR. MARGULIS:** Sure.

23 **THE WITNESS:** Okay.

24 **BY MR. MARGULIS:**

25 Q On that first meeting on that Saturday morning -- so I

1 think you said that Katie had no questions for you?

2 A Correct.

3 Q And did you explain to her what your expectations were  
4 of her or Peter?

5 A I'm sure that I did on that Saturday and on the phone.  
6 And I apologized for not being there on Friday. I just had no  
7 control over when Court got out.

8 Q So the Friday you're referring to, that was a meeting,  
9 not a visitation period?

10 A Right. A brief meeting. I do that as a courtesy, so  
11 the parties and the children are comfortable with me -- with  
12 seeing me the next time.

13 Q Did there come a time -- and after that first meeting  
14 on Saturday -- strike that.

15 That first meeting on that Saturday, you met  
16 with Katie. Her mom was present. Olivia was present. Did  
17 you have any conversation with Olivia at that point in time?

18 A We were -- yes. We were going out to meet dad, and I  
19 told her I apologize for missing the visit on Friday, and she  
20 said that that was okay.

21 **MR. CERVI:** Objection to what the child said,  
22 Judge. That's hearsay.

23 **THE COURT:** Sustained.

24 **BY MR. MARGULIS:**

25 Q Okay. Did you -- so did you leave with Katie and the

1 kids from 43 Court Street and then meet Peter? What happened  
2 next, I guess?

3 A The children and I left outside the building. We just  
4 turned left a little bit. I had text Peter and his mom to  
5 come to the -- in front of the -- of 43 Court Street, so that  
6 we could get the kids, and Katie and her mom went to the  
7 parking lot where they had parked across the street, to get in  
8 their vehicle to leave, I'm assuming.

9 Q So -- okay. So you got into Peter's vehicle?

10 A Yes.

11 Q And everybody else did, as well?

12 A Um-hmm.

13 Q Okay. And is that the first time then that you met  
14 Peter?

15 A Yes.

16 Q Did you have a conversation with Peter of the type  
17 that you had with Katie?

18 A Yes. Always.

19 Q Did you give him an opportunity to ask questions?

20 A Yes.

21 Q Did you explain to him what your -- what you  
22 understood your role to be?

23 A Yes.

24 Q And did you explain to him any expectations that you  
25 had or ground rules or policies, if you will?

1 A Yes.

2 Q Did Peter say anything to you at that point?

3 A No, just that -- he acknowledged that he understood.

4 Q During the first visit on that Saturday, do you  
5 remember what you did, or what they did?

6 A I believe we went to the naval park.

7 Q Downtown Buffalo?

8 A Yes.

9 Q Did anything unusual take place during that period?

10 A Not that I can recall. I know it was always difficult  
11 to figure out when Mason --

12 **MR. CERVI:** Objection, Judge. It's asked and  
13 answered. She said not that she could recall.

14 **THE COURT:** What was the objection to? I'm  
15 sorry.

16 **MR. CERVI:** She responded to a question that's  
17 not out there. He asked a question. She said not that she  
18 can recall, and then she started talking after that.

19 **THE COURT:** I'm going to overrule that.  
20 She -- I think she said not that she could recall, but then  
21 was recalling something. I'm going to let her finish.

22 **THE WITNESS:** I was just going to say, with  
23 needing to always return Mason for feeding, that -- we didn't  
24 know when that fit into the schedule, because Katie wasn't  
25 clear on when breastfeeding should occur. She said it should

1 be every two hours. She said sometimes, depending on if he  
2 was fussy or not -- he would get fussy depending on when she  
3 breastfed him.

4 **BY MR. MARGULIS:**

5 Q Did you have any discussion with her before leaving to  
6 go on the visit with Peter about the breastfeeding?

7 A Vaguely. It was -- there was no clearly defined rules  
8 whether it's supposed to be two hours exactly, two hours and  
9 45 minutes exactly. We didn't know where we were -- I didn't  
10 know where we were going to be with the children. Of course  
11 we didn't know where she was going to be when we called for  
12 picking up for breastfeeding and a nap, so there was time that  
13 would be attached to that, like, how long it would take her to  
14 get to us. It was always a mystery.

15 Q Before you left to embark on the first visit, did  
16 Katie tell you at what time she had last breastfed the child?

17 A She was fairly good about communicating when she  
18 breastfed the child. It was usually 45 minutes to an hour  
19 before we saw -- before we picked up the child, at any given  
20 time.

21 Q So if it was 45 minutes to an hour before picking up  
22 the child -- and I think you just said that she, at some  
23 point, indicated she breastfeeds him every two hours?

24 A Um-hmm.

25 Q So were you expecting to have to return him after the

1 first hour?

2 A Well, that's why it was always a -- it was always,  
3 does he need to be breastfed? Is he being fussy? Peter would  
4 feed him pieces of food, and he ate it. Olivia said that he  
5 eats at -- that mom feeds him pieces of chicken, vegetables.  
6 It just -- it was never clearly defined. It was always a  
7 wonder.

8 Q So how would that work on that occasion, and even  
9 successive occasions, with the breastfeeding? How would you  
10 know when the parties needed to meet up again to exchange the  
11 baby? Would you communicate with Katie?

12 A Usually not during the visit. I would let her know  
13 when we were going to meet, and I knew that it would take some  
14 travel time, but she wanted Peter to pick up on cues for when  
15 Mason was ornery. That was her word, cues. Peter needed to  
16 learn the cues of when he needed to be fed.

17 Q In your presence did she tell Peter what those cues  
18 were?

19 A No.

20 Q Was there ever an occasion Katie would -- strike that.

21 During these visits, if there was any  
22 communication between Katie and any of you folks in the car or  
23 on the visit, would it be between you and Katie or Peter and  
24 Katie or both?

25 A Me and Katie.



1 Q Okay. So were there ever any occasions when  
2 Katie -- strike that.

3 By what means of communication are we talking  
4 about? Text messaging?

5 A Text messages.

6 Q Were there ever any occasions when she text messaged  
7 you and said it's time to bring the baby?

8 **MR. CERVI:** Judge, I'm going to object to the  
9 leading. It's -- he's almost testifying. He's -- it's  
10 extreme leading.

11 **THE COURT:** I -- I --

12 **MR. CERVI:** He's saying, is there any time she  
13 said to you, blank. It doesn't get any more leading than  
14 that.

15 **THE COURT:** Sustained. Mr. Margulis, try to be  
16 a little more vague about your questions.

17 **MR. MARGULIS:** Sure.

18 **BY MR. MARGULIS:**

19 Q Were there ever any occasions during which you  
20 received text messages from Katie during the visitation  
21 periods?

22 A Yes.

23 Q Ever receive any texts --

24 A Yes.

25 Q -- on your phone? Would that have been on your phone?

1 A Yes.

2 Q Were any of those text messages relating to feeding of  
3 the children?

4 A She would want to know when she was getting the child  
5 back, because it was beyond the two-hour mark, and she wanted  
6 to know when the child was going to be returned, so that she  
7 could breastfeed Mason.

8 Q Okay. On any of those occasions when you received the  
9 text message of the type you just described, what did you do?

10 A I would have a conversation with dad. I would text  
11 her -- we didn't text often, but I would text her that Mason  
12 did eat, or that we were going to meet her at such and such a  
13 location.

14 Q Was there -- were there ever any occasions -- so after  
15 you received word from Katie, were there ever any occasions  
16 during which Katie requested to meet so she could breastfeed  
17 Mason, that Peter denied that request --

18 A No.

19 Q -- that you're aware of?

20 A Correct.

21 Q And how did it come about that you would determine  
22 where you would meet to exchange Mason for breastfeeding?

23 A Peter and I would have a conversation and let Katie  
24 know. During the first four visits or so -- maybe three  
25 visits, Katie wanted to know exactly where we were, so she was

1 close by.

2 Q When you say she wanted to know where you were, at  
3 what stage of the visit did she ask you that?

4 A The very beginning of the -- of the visit; she wanted  
5 to know exactly what we were doing and where we were going.

6 Q In advance?

7 A Yeah.

8 Q And would you tell her, or would Peter tell her?

9 A I think the first visit or two, but I had  
10 conversations with Mr. Cafarella, and that wasn't part of the  
11 Court order. We didn't have to let her know. My job was to  
12 keep the children safe and make sure that the visits went  
13 smoothly between dad and the kids.

14 Q Did you have any understanding as to what was supposed  
15 to occur after exchanging Mason for breastfeeding purposes  
16 with regard to Mason?

17 A My understanding, he was going to be breastfed and he  
18 was going to take a short nap and be returned to dad to  
19 continue the rest of the visit, how ever long.

20 Q Did that, in fact, occur?

21 A Maybe once. We very rarely got Mason back. I can't  
22 recall how many times. There were probably four or five times  
23 where there was minutes left of the visit and Katie would say,  
24 I'm here. Does Peter want Mason? And there was minutes left.

25 Q Was there a mechanism by which you would communicate

1 with Katie at the end of this breastfeeding and napping  
2 period?

3 A I never knew -- or we never knew when the child was  
4 breastfed. She could have picked him up at noon and drove  
5 around and didn't feed him until 1:00, and then he napped  
6 until 4:00. I have no idea.

7 Q Was there a mechanism in place? Did you discuss with  
8 Katie what your expectation was, as far as communication  
9 between the two of you after the nap, after the breastfeeding?

10 A She would tell me that she would call me if the child  
11 was awake. Like, she controlled the situation.

12 Q And on how many of those occasions -- and I think you  
13 said there were 16, in total?

14 A I believe so.

15 Q Of those -- strike that.

16 Of those 16 occasions, on how many of them did  
17 you exchange Mason for purposes of breastfeeding and/or  
18 napping?

19 A Every single time.

20 Q All 16?

21 A Um-hmm.

22 Q Okay. Out of those 16 occasions -- on how many of  
23 those 16 occasions was Mason, in fact, returned to you and  
24 Peter after you delivered him for the breastfeeding and the  
25 napping?

1 A I would say two.

2 Q Two times yes, or two times no?

3 A Two times yes, he was returned.

4 Q He was returned to you twice out of the 16 visits?

5 A Two times out of 16.

6 Q By the way, so at the first visit when you met on  
7 Court Street, did Katie communicate to you anything in terms  
8 of instructions with regard to the children?

9 A She did say that they should be kept out of the heat.  
10 She always included the inhaler for Olivia. At the very first  
11 visit she gave me two pieces of paper from the pediatrician  
12 for each of the children, indicating that the heat is -- would  
13 be an issue. They -- they didn't say they shouldn't be  
14 outside, but I needed to be aware of it. That's what she told  
15 me.

16 Q So she gave you an inhaler. Which child would that  
17 have been for?

18 A That was for Olivia.

19 Q Do you have any knowledge as to any conditions that  
20 Olivia suffers from that requires the use of an inhaler?

21 A My understanding is she does have asthma.

22 Q Did Katie instruct or you Peter as to the use or  
23 application of the inhaler?

24 A She did not instruct me. I do know that Peter had  
25 asthma growing up, so he was familiar with the Albuterol.

1 Q Would Katie provide you with the inhaler on each of  
2 the 16 visits?

3 A Yes.

4 Q Did there come a time -- strike that.

5 Did there come a time when Katie -- I'm sorry,  
6 when Olivia used the inhaler during the 16 visits?

7 A She did, yes. Once.

8 Q And -- one time?

9 A On one occasion, yes.

10 Q And did she do it herself or did she appear to require  
11 assistance?

12 A She was adamant that she did it herself. She told her  
13 father she could do it by herself, and he wanted to assist  
14 her.

15 Q And who won that debate?

16 A She pushed him away. She said she knew how to do it,  
17 and he just stood over her to make sure that she could -- she  
18 could do it on her own. She did end up needing his  
19 assistance.

20 Q Oh, she did? Okay. And did he assist?

21 A Yes.

22 Q At the time she used the inhaler, did she appear to be  
23 in any distress just before using the inhaler?

24 After she used the inhaler with the assistance  
25 from Peter, did she appear to be in any distress?

1 A No.

2 Q At that first meeting with Katie did she tell you  
3 anything about the children's food preferences?

4 A No. I did ask if there was any nut allergies, because  
5 I would like to be aware of that, obviously.

6 Q And what did she say?

7 A There was no food allergies, and that Mason was  
8 breastfeeding.

9 Q You said there was no discussion about food  
10 preferences?

11 A Correct. Not from -- not from Katie.

12 Q Other than staying out of the heat and giving you the  
13 inhaler, did Katie provide you with any restrictions or rules  
14 or anything like that that needed to be followed with respect  
15 to the visitation?

16 A She just wanted the kids out of the sun. She didn't  
17 want them in the sun.

18 Q And did you have occasion to observe Katie and the  
19 children upon leaving to go with Peter on those 16 visits?

20 A I'm sorry, I don't understand your question.

21 Q On each of these 16 occasions, the visitation periods,  
22 you would meet up with Katie and Peter and the kids?

23 A Yes.

24 Q And then Katie would hand off the kids to you and/or  
25 Peter?

1 A Only me.

2 Q Only you?

3 A Only me.

4 Q Okay. Did you have occasion to observe her demeanor  
5 at the time that she was handing off the children to you on  
6 those occasions?

7 A Yes.

8 Q How would you characterize her demeanor?

9 A Bitter, angry.

10 Q On any of those occasions -- now, you said there were  
11 16 days, correct?

12 A Yeah.

13 Q And each day would be, kind of, cut in half, because  
14 you would have to exchange the child. Would there have been  
15 more than 16 times that you would see Katie -- and Peter, for  
16 that matter?

17 A I would see Katie an extra time, if we dropped off  
18 Mason and maybe picked him up, yes.

19 Q And during the exchanges where you've had the occasion  
20 to observe Katie's demeanor, on any of those occasions did  
21 Katie make any statements to the children about Peter?

22 A No.

23 Q And did she, during those same occasions, make any  
24 statements to the children about you?

25 A About me? No.



1 Q Okay. During these visitation periods did you ever  
2 have occasion to observe Peter checking Mason's diaper to see  
3 if it needed to be changed?

4 A Yes. Every time.

5 Q Were there ever any occasions that you observed where  
6 Peter changed the diaper?

7 A Yes. There was only two times where he didn't.

8 Q And was this always in your presence?

9 A Always, yes.

10 Q Did you have occasion -- on those occasions, did you  
11 have the opportunity to personally observe what was in the  
12 diaper?

13 A Sometimes I did, yes. I do respect people's privacy,  
14 so I wouldn't watch Peter changing the diaper, per se, but  
15 being around children, I know if there's feces in the diaper,  
16 it smells, and it did not smell. It never smelled, and dad  
17 would say what was in the diaper. It was always urine in the  
18 diaper, never feces.

19 Q Never?

20 A Never.

21 Q And of those occasions where Peter told you there was  
22 urine in the diaper, did you ever look for yourself or happen  
23 to see for yourself if that was, in fact, the case?

24 A Yeah. Once he changed the diaper and moved it away  
25 and folded it up to where it needed to be contained so he

1 could throw it away, I could see that the white fiber on the  
2 inside was yellow.

3 Q And was there anything that you observed in Peter's  
4 diaper changing technique that gave you any concern?

5 A No, not at all.

6 Q Are you aware of any occasions when Peter returned  
7 Mason to Katie with a dirty diaper, meaning feces in the  
8 diaper?

9 A There was one occasion we left a visit I had -- it was  
10 towards the end when we were going to drop off the child, and  
11 I told Katie, I said, you might want to change him or check  
12 his diaper, because between transporting the child from the  
13 spot where we were to where we were meeting Katie, Mason had  
14 gone to the bathroom.

15 Q Number one or number two?

16 A Number two. I'm assuming number two. It did smell.

17 Q And you said that was on your way to going to meet  
18 Katie?

19 A Yes.

20 Q And you handed her the baby and you said, you might  
21 want to change him?

22 A Yes.

23 Q Okay. During the exchanges, when you first start out  
24 in the morning, I guess, were the parties punctual in meeting?

25 A Dad was. Mom was not.

1 Q Can you explain that?

2 A Dad was -- dad was always at the visit -- at the  
3 location, and mom would either be late -- sometimes she would  
4 text me. I never knew when Katie was at the location we were  
5 meeting, because she always parked in a different spot. I had  
6 to actually find her in the parking lot.

7 Q How would you do that? So you -- strike that.

8 Where did the -- where did the exchanges occur?

9 A Majority of the exchanges were on Walden and Union at  
10 the Milton's restaurant.

11 Q How did that work? Would you get there and look for  
12 Peter or --

13 A I would back into my spot. Peter was there.  
14 Sometimes he and his mother would be inside the restaurant.  
15 Sometimes they would be in the car, depending on what we were  
16 doing, and I would look at my clock. Wait for Katie. She did  
17 text me on one occasion saying that she was late. She had to  
18 change Mason's diaper. She arrived late. She changed his  
19 diaper again. She then tried to breastfeed him, and she said  
20 that he was not interested on that particular day.

21 Q So do you recall, specifically, on how many occasions  
22 Katie was late arriving to the first exchange?

23 A Almost every time. I don't have the number. If you  
24 wanted me to give you a number, I would say she was late 14  
25 out of 16 times.

1 Q And how late?

2 A Minutes. I think the latest she was, was 10 minutes,  
3 but that's when she pulled over and let me know she was  
4 changing the diaper.

5 Q And when you would exchange for the final return of  
6 the children, was -- you were with Peter, so was Katie  
7 punctual?

8 A Yes. She was always there. Except for maybe one time  
9 she was a couple minutes or a minute late.

10 Q At these exchanges -- at the first exchange of the  
11 day, can you describe how smoothly they went, as far as  
12 handing off the children efficiently and, in a timely manner,  
13 going on your way?

14 A I would get to the car with Olivia and Mason. Katie  
15 and her mom would be waiting there for us, or we would wait  
16 briefly. There was one time we went to the naval park and  
17 parking is a little difficult there, and Katie text me and  
18 said where she was. I think she had to circle around the  
19 arena again, but her mother would get out of the car and ask  
20 Olivia how she was. It was always the two of them at the  
21 visit picking up Mason.

22 Q Were there ever any occasions when Katie caused the  
23 start of the visitation period to be delayed, other than just  
24 being late, maybe up to 10 minutes?

25 A Yes. I believe it was the third visit we had

1 she -- she demanded knowing what -- exactly what we were  
2 doing, what time we were going to be at a certain location,  
3 what time we were going to return the child for breastfeeding.  
4 I had text Mr. Cafarella to see if there was a Court order  
5 stating that we had to tell her exactly what we were doing and  
6 where we were going. That took an hour, so the visit did  
7 start an hour later.

8 Q Did it extend an hour?

9 A It did not.

10 Q Did Peter get an extra hour at the end?

11 A He did not.

12 Q Did that occur on more than that one occasion?

13 A No, it did not.

14 Q And during the exchanges -- so at the -- at the second  
15 exchange of the day, when they were exchanging just the baby,  
16 can you describe how that would occur? As far as the -- and I  
17 don't mean the text messaging or anything leading up to it.  
18 Once you both were at the same location, what would happen?

19 A I would hand off Mason to Katie. I would ask if he  
20 was going to be returned. She said it depended on how long he  
21 ate and when his nap was. Any conversation with Katie was  
22 like pulling teeth, and that always baffled me.

23 Q What would Olivia be doing during these exchanges of  
24 Mason?

25 A She would talk to her grandmother and --

1 Q She would get out of the car?

2 A She got out of the car, until I asked that grandma  
3 stay in the car.

4 Q Can you describe that more specifically, please?  
5 Grandma was there, I think you said, at every exchange?

6 A She was.

7 Q So you met Katie. Did you pull your cars close to  
8 each other at some parking lot?

9 A No. We usually would walk to where Katie could easily  
10 get Mason, from -- from the side of the road. Sometimes it  
11 was the side of the road. Sometimes it was a parking lot. We  
12 just met.

13 Q Okay. So you park your car.

14 A Well, we were in Peter's car. Yeah.

15 Q I'm sorry, Peter would park the car?

16 A Yup.

17 Q Was he the driver?

18 A Always.

19 Q So Peter parked the car, and would he park near where  
20 Katie's car was?

21 A Never.

22 Q Why?

23 A Katie didn't -- she made it very clear she hated  
24 Peter. She didn't want him to be near her. She didn't want  
25 to talk to him or see him, and she told me on two occasions

1 that she hated him.

2 Q She said this or she texted it?

3 A She said it.

4 Q Was anyone else present at the time she said that?

5 A The last visit she said it her mother was present,  
6 Olivia was present, and Mason was present.

7 Q So your testimony is that she said that in front of  
8 the kids?

9 A Yes.

10 Q You said -- there were two things. I only wrote down  
11 one. You quoted her as saying she hated him, and something  
12 else.

13 A Didn't want to be anywhere near him.

14 Q Did she say why?

15 A Because she hated him.

16 Q Had Peter ever said anything like that to you about  
17 Katie?

18 A No.

19 Q So describe for me -- okay. So you said Peter would  
20 not park near Katie. Is it your testimony that Katie  
21 expressed to you and/or Peter that she didn't want him parking  
22 near her? She specifically said that?

23 A She said she would not park near him. He was always  
24 on time, so it was her that was coming into the parking lot.

25 Q I see.

1           A     And she wouldn't park anywhere near him. I was  
2 baffled as to why there was a hunt for -- by me -- where she  
3 parked in the parking lot. It didn't make any sense.

4           Q     So Peter would arrive before Katie?

5           A     Yes.

6           Q     And then Katie would somehow or another find where you  
7 were, and she would park away from Peter, correct?

8           A     I would see her coming into one of the entryways to  
9 Milton's, and then her vehicle would disappear, and I would  
10 have to go find her in the parking lot.

11          Q     Okay. Once you found her in the parking lot, what  
12 would happen next?

13          A     She would get the kids out. She would get Mason in  
14 his stroller. She would kiss Olivia goodbye, tell her to take  
15 care of her brother. Whenever -- after I put the rules down,  
16 that her mom could not get out of the vehicle, she would leave  
17 the windows down.

18          Q     Why would Olivia be -- so were you inside the  
19 restaurant on these occasions?

20          A     No. We just met outside.

21          Q     So you were in the car?

22          A     I was in my vehicle. Peter and his mother were in  
23 their vehicle.

24          Q     Okay. I just want to clarify, you're describing when  
25 you would first start out a visitation period in the morning?



1           A     Yes.

2           Q     Okay.  Let me draw your attention to the occasions  
3 when you would meet, specifically, in the middle of the day,  
4 if you will, for purposes of returning -- or exchanging,  
5 rather, Mason.

6           A     Okay.

7           Q     How ever frequently or after whatever duration, but  
8 there were occasions on -- at least 16 of them, were there  
9 not -- when you met midway through the visitation period to  
10 exchange the baby for feeding?

11          A     Yes.

12          Q     Okay.  So with those occasions in mind, my question  
13 is, can you describe, how did that -- how did the exchange  
14 take place?  I think you started to say you would text with  
15 Katie to determine where to meet?

16          A     Correct.  We did that, yes.

17          Q     Okay.  And then you each drove there.  Someone got  
18 there first, right?

19          A     Yes.

20          Q     So you parked your respective cars, presumably not  
21 next to each other, right?

22          A     Right.

23          Q     What would happen next, as far as actual exchange of  
24 the child?  Who would get out of what car and so forth?

25          A     Peter would get out of his car, put Mason in the

1 stroller. I would take Olivia and Mason to Katie at her  
2 vehicle. Whether she was there first or not, it just -- it  
3 just depended.

4 Q Okay. So why did you take Olivia to mom's car? Was  
5 there any particular reason why you would do that?

6 A I think sometimes mom would park in a spot where she  
7 couldn't see Peter's car or I couldn't see Peter's car. My  
8 job was to supervise Olivia, so if I was taking Mason to mom  
9 without -- Olivia would be unsupervised with dad for that  
10 short amount of time.

11 Q Would Peter stay in his car or get out of his car to  
12 assist in the exchange?

13 A He would get back in his car once he got Mason into  
14 the stroller.

15 Q Okay. So were there ever any occasions when Peter  
16 actually approached Katie's vehicle?

17 A No.

18 Q Okay. So you -- so Peter would stay in his car after  
19 putting the baby in the stroller, and you then had both kids  
20 with you, because you were the supervisor?

21 A Right.

22 Q What were your observations as to anything that would  
23 happen next? So you would walk with the kids over to Katie's  
24 car?

25 A I would walk -- yes. I would tell Katie if the diaper

1 was changed, ask when we were going to get Mason back. I  
2 would tell her any relevant information. She would, again,  
3 have the windows down, so her mother could hear anything that  
4 I said.

5 **MR. CERVI:** Objection as to the speculation,  
6 Judge.

7 **THE COURT:** Sustained.

8 **BY MR. MARGULIS:**

9 Q After you requested that the grandmother stay in their  
10 vehicle, did she comply with that?

11 A Sometimes she did. Sometimes she did not.

12 Q On those occasions that she would get out of the  
13 vehicle, what, if anything, did you observe her doing?

14 A She would ask Olivia if she was okay. On one occasion  
15 she asked Olivia if she wanted to continue the visit and if  
16 she was okay.

17 Q On any of those -- during any of those exchanges when  
18 you were exchanging the baby, were there ever any occasions  
19 when you heard -- without repeating anything that may or may  
20 not have been said, were there ever any occasions when you  
21 heard the grandmother make any negative comments about Peter?

22 A Yes.

23 Q And to whom did she make those comments?

24 A She was just talking out loud, as --

25 **MR. CERVI:** Judge, I'm going to object to that

1 last answer, as well as to this one. It's clearly hearsay,  
2 Judge. There's no question. I understand that they're not  
3 saying -- you know, it's kind of clever -- without saying what  
4 was said. But it's still offered to prove the truth of the  
5 matter asserted, so it's offered to show that grandma, who is  
6 not here, and it's an out-of-court statement that she had  
7 said -- that she made a derogatory statement towards the  
8 father in the child's presence. It's -- it can't be offered  
9 for any other reason, other than the truth that they are  
10 seeking to show, that she made a negative statement about dad  
11 in the child's presence, so I would object to that, as well as  
12 the next question.

13 **THE COURT:** As well as the next question?

14 **MR. CERVI:** It was --

15 **MR. MARGULIS:** The preemptive objection.

16 **THE COURT:** The crystal ball question that you  
17 already know he's going to ask?

18 **MR. CERVI:** I'm a clairvoyant, Judge.

19 **THE COURT:** What's that?

20 **MR. CERVI:** I said I'm a clairvoyant.

21 **THE COURT:** I want to see your certification  
22 papers next time you come in.

23 **MR. MARGULIS:** It's not being offered for the  
24 truth of the matter asserted, Your Honor. It goes to the  
25 demeanor and the state of mind of the declarant. We're not

1 suggesting or offering proof as to the truthfulness of the  
2 statement.

3 First of all, the question didn't even ask what  
4 did she say. That may or may not have been my next question.  
5 Actually, he was wrong. That wasn't going to be my next  
6 question, because I know that would be hearsay, but I don't  
7 believe the question that's before the witness right now asks  
8 for hearsay or is in any way improper.

9 **THE COURT:** Mr. Cafarella, do you want to  
10 respond?

11 **MR. CAFARELLA:** Judge, I don't believe it's  
12 hearsay. It's the -- it's not an out-of-court statement.  
13 It's like the old law school question where there's a person  
14 about to die, and they said, are you alive, and the person  
15 says, yes, I am. It's not the statement that yes, I am alive;  
16 it's the fact that they spoke, and that's not hearsay, so I  
17 think it's basically the same thing. It's surmising that a  
18 negative comment was made, not the specific comment. The  
19 specific comment would be hearsay, but not the fact that it  
20 was said.

21 **THE COURT:** Okay. I agree. Overruled.

22 **MR. MARGULIS:** I don't know if the witness  
23 answered the question.

24 **THE COURT:** She hasn't.

25 **MR. MARGULIS:** You can -- I believe you can

1 answer the question.

2 **THE COURT:** Do you want her to read back the  
3 question, so it's specifically read back?

4 **THE WITNESS:** Yes, please.

5 **MR. CERVI:** Judge, I believe it was answered. I  
6 believe she said there was a negative statement that was made.

7 **MR. MARGULIS:** The last question I asked was to  
8 whom.

9 **THE COURT:** Stop. We have a record. Let me  
10 have the record read back.

11 *(Whereupon, the above-requested testimony was read*  
12 *back by the reporter.)*

13 **THE COURT:** All right. So that's overruled.  
14 She said yes to the disparaging comment about father, so --

15 **MR. MARGULIS:** So the question really that's  
16 dangling is, to whom were any negative comments made?

17 **MR. CERVI:** Objection. That's asked and  
18 answered. She indicated --

19 **THE COURT:** Overruled, because she didn't finish  
20 her answer, because you had objected, so let me let her finish  
21 her formulation of her answer, and then we'll move on.

22 Go ahead.

23 **THE WITNESS:** Anyone who was listening. I was  
24 present, and the two children were present.

25 **THE COURT:** Thank you. Okay.

1                   **MR. MARGULIS:** Based on -- again, you can't  
2 repeat what she said. Based on what you heard her say, the  
3 grandmother, did you draw any conclusions as to the  
4 grandmother's sentiments toward Peter?

5                   **MR. CERVI:** Objection, Judge. That calls for  
6 speculation.

7                   **MR. MARGULIS:** It's not speculation. It's a  
8 conclusion. It's this witness's state of mind, which is  
9 admissible, and it's an exception to the hearsay rule.

10                   **THE COURT:** Overruled.

11 **BY MR. MARGULIS:**

12           Q     Did you draw any conclusions as to the grandmother's  
13 sentiments towards Peter, based on the negative comments she  
14 made in the presence of the two children?

15           A     Yes.

16           Q     What conclusions did you draw?

17           A     That Peter should not be around the children.

18           Q     Was there any occasion when you exchanged the children  
19 inside a Wegmans?

20           A     Unintentionally, yes.

21           Q     And when was that, if you recall?

22           A     I don't recall the exact date.

23           Q     Was it on one of those 16 that we described?

24           A     Yes. Yeah.

25           Q     You said it wasn't intended. How did it -- well,

1 strike that.

2 What, if anything, took place inside a Wegmans  
3 that's relevant here today?

4 A We had Olivia and Mason shopping. It was towards the  
5 end of the visit. The drop off was supposed to be at Wegmans.  
6 We were going to meet -- I was going to meet Katie outside  
7 with the two kids. It was very close to the time that the  
8 visit would end. Katie text me and asked if she wanted me to  
9 send her mother in to pick up the children, and I said no.

10 We cashed out. Olivia was -- picked out some  
11 ice cream that she wanted, and we were walking away from the  
12 cashiers, from the checkout, and out of nowhere, Katie's  
13 mother came in, pushed me out of the way from the stroller,  
14 and just took off pushing the stroller outside of Wegmans. I  
15 was just as shocked as Olivia. Olivia looked at me with big  
16 eyes and an open mouth, and didn't say anything --

17 **MR. CERVI:** Objection, Your Honor.

18 **THE WITNESS:** -- but she was just startled.

19 **MR. CERVI:** There's no question out there.

20 She's going on a narrative.

21 **MR. MARGULIS:** I asked what happened.

22 **THE COURT:** All right. Just -- sustained.

23 Just --

24 **MR. MARGULIS:** I'll rephrase the question.

25 **THE COURT:** Ask the next question that would



1 elicit that same answer.

2 **MR. MARGULIS:** Sure.

3 **BY MR. MARGULIS:**

4 Q So Katie text you and asked you if she should send her  
5 mother into Wegmans to pick up the kids?

6 A To assist.

7 Q And you said no?

8 A I said no.

9 Q How much later was it when you saw the grandmother  
10 inside Wegmans?

11 A Less than a minute.

12 Q Can you be more specific with respect to the actions  
13 taken by the grandmother at the moment when you saw her?

14 **MR. CERVI:** Objection, Your Honor. It's asked  
15 and answered. She already testified as to what she said  
16 happened.

17 **MR. MARGULIS:** Okay. She said, she pushed me  
18 out of the way. I think I have the right to inquire as to the  
19 specifics of what that means.

20 **THE COURT:** Okay. Overruled. I'll allow it.

21 **BY MR. MARGULIS:**

22 Q Let me rephrase the question, then. You said she  
23 pushed you out of the way. Can you describe what you meant  
24 when you said she pushed you out of the way?

25 A The best way I can describe it is, she hip checked me.

1 She just -- her right side -- her left side hit my right side,  
2 and she just -- she just pushed me out of the way and --  
3 pushed my hands, pushed me -- literally pushed me so that she  
4 could take over pushing the stroller, and she walked out of  
5 the store with Mason inside the stroller.

6 Q And where was Olivia?

7 A She was next to me, and grandma was about six feet  
8 ahead.

9 Q So was Olivia next to you when you got hip checked?

10 A She was, yes.

11 Q Was Olivia next to you when you got pushed by the  
12 grandmother?

13 A She was a little bit beside me, behind me. We  
14 were -- we could have held hands we were so close.

15 Q Okay. So did you have occasion to observe Olivia when  
16 this occurred?

17 A Yes.

18 Q And you can't repeat anything she said, of course.  
19 What, if anything, did you observe about her in -- at that  
20 moment?

21 A She -- her mouth was open. Her eyes looked like she  
22 had just been stunned, and she was -- she just had this look  
23 of surprise on her face.

24 Q And now, was this -- when you were in Wegmans to meet  
25 for the exchange, which type of exchange was it for? Was it

1 for the breastfeeding, or was it upon the conclusion of access  
2 for the whole day?

3 A At the very end, conclusion.

4 Q When the grandmother came into Wegmans and this  
5 occurred, was Katie there, as well?

6 A No.

7 **THE COURT:** Can I interrupt for one second? I  
8 just want to be clear on -- it's quarter to 4:00. We're going  
9 to stop at 4:00? I'm assuming Ms. Kratt is going to have to  
10 come back.

11 **MR. MARGULIS:** Sorry. Yes.

12 **THE COURT:** I'm trying to determine if I need to  
13 take a break for everybody. If we're only going for 15  
14 minutes, I want to make sure my court reporter is okay.

15 **MR. MARGULIS:** So we're done.

16 **THE COURT:** If we're done at 4:00, we'll keep  
17 going right now. If we're not --

18 **MR. MARGULIS:** Yeah. I think everyone agreed  
19 with Mr. Cafarella's request.

20 **MR. CAFARELLA:** That's perfect.

21 **THE COURT:** Mr. Cervi, 4:00 still okay?

22 **MR. CERVI:** That's fine, Judge.

23 **THE COURT:** All right. We're just going to go  
24 right until 4:00. Okay?

25 **MR. MARGULIS:** Sure.

1                   **THE COURT:** Thank you.

2                   **BY MR. MARGULIS:**

3                   Q     So after this occurred at Wegmans, where was Peter?

4                   A     He and his mom were behind me.

5                   Q     Inside Wegmans?

6                   A     Yeah.

7                   Q     During the visits that you supervised, was it or was  
8 it not customary for Peter and the children to say goodbye at  
9 the end of the exchange?

10                  A     It would be -- I assume it would be customary, but  
11 given the players, it was not customary. He rarely had Mason  
12 back to say goodbye to him.

13                  Q     I think we established before that there were many  
14 visits where Mason wasn't returned. So let's -- let me just  
15 focus on Olivia then, for the moment. Would it have been  
16 customary at the end of the visit for the day for the  
17 parties -- or for Peter and the kids -- strike that -- for  
18 Peter and Olivia to exchange goodbyes?

19                  A     Yes.

20                  Q     Did you have occasion to observe that interaction or  
21 interactions?

22                  A     Yes.

23                  Q     How would you describe it? What did Peter do? What  
24 did Olivia do?

25                  A     Peter would always ask Olivia if he could have a hug.

1 He would tell her to have a good week, encourage her in  
2 school. He would say, I'll call you during the week, or I'll  
3 call you later, or I'll talk to you tonight, because he would  
4 call her on his way home on Sundays.

5 Q You said he asked for a hug. Did you see them  
6 actually hug?

7 A Sometimes I did.

8 Q How about goodbye kisses, either way?

9 A Not from Olivia.

10 Q Would Peter kiss Olivia?

11 A I don't recall.

12 Q And how about that day at Wegmans, with respect to the  
13 occasion you just described; did Peter say goodbye to Olivia?

14 A There was no chance. Grandma was out the door with  
15 Mason, and I followed her and had Olivia with me.

16 Q Can you describe for Court -- strike that.

17 Can you tell us, for the Court, some of the  
18 examples of the activities that Peter did with the kids during  
19 the 16 days of visitation that you supervised?

20 A Sure. We went to the zoo; Niagara Falls Aquarium;  
21 several playgrounds; Bounce Magic, on a couple of occasions; a  
22 pottery painting place in Clarence; Clarence Hollow for their  
23 Halloween pumpkin festival. There was another pumpkin farm  
24 that we went to on Clinton Street. We went to East Aurora.  
25 We went to the school where Peter used to go to school, played

1 in the creek down there, played on that playground.

2 Q Were there ever any occasions when you would go out  
3 for breakfast or lunch or dinner?

4 A We would go to -- yeah. Several times.

5 Q On those occasions do you remember any specific places  
6 you've gone with Peter and the kids?

7 A We went to Panera's a few times. We went to  
8 Charlie's, Milton's, Alton's. There was a restaurant we went  
9 to twice down by the arena, a natural food store down there,  
10 restaurant.

11 Q And -- I'm sorry. I don't want to cut you off.

12 A You're okay.

13 Q Would everybody go in: both kids, Peter, his mom,  
14 you?

15 A Yes.

16 Q Whoever was accompanying Peter for any particular  
17 occasion would all go in?

18 A Yes.

19 Q Without repeating statements of Olivia, did you ever  
20 have occasion to observe Olivia ordering food during any of  
21 these occasions?

22 A Yes.

23 Q Did you ever have occasion to observe her eating food  
24 during any of these occasions?

25 A Yes.

1 Q Were there any occasions where you all went into a  
2 restaurant when Olivia did not eat food?

3 A No. She always ate. She always ate food.

4 Q Would it be typical for her to order for herself or  
5 did Peter or somebody else have to order for her?

6 A No, it was typical for her to order her own food.  
7 Peter always asked her what she wanted to eat, and in fact, a  
8 lot of the places were dictated where we went based on what  
9 Olivia said that she wanted to eat. Peter always took into  
10 consideration things Olivia wanted to do, as far as eating and  
11 for activities.

12 Q You said on at least one occasion -- you mentioned a  
13 pottery place?

14 A Yes.

15 Q Do you remember the name of it?

16 A I don't, no.

17 Q What kind of place is it?

18 A It's in Clarence. It's on Main Street. You pick out  
19 your pottery. You paint it, and they fire it, and you go back  
20 later on and pick it up.

21 Q So you get to keep it?

22 A You get to keep it. You just don't leave with it that  
23 day, because it has to be fired.

24 Q Were there ever any occasions Olivia made or painted  
25 one of these pottery objects?

1           A     She did.  She painted two items, but that was  
2 my -- that was my last visit that I had with them.

3           Q     Do you remember what the two items were?

4           A     One was a mug, and the other item -- I forget what the  
5 other item was.

6           Q     And she painted them?

7           A     She did.

8           Q     And did you go back -- or did Peter go back to get  
9 them on those, presumably, two occasions?

10          A     I'm not sure, because that was my -- that was my last  
11 weekend that I was supervising them.

12          Q     Oh, I see.  Okay.  So you -- so the last weekend was  
13 when you went to do the painting?

14          A     Yes.

15          Q     Okay.

16          A     Yes.

17          Q     How would you characterize Olivia's behavior in  
18 public?

19          A     Sometimes it was good.  Sometimes it was not so good.

20          Q     What do you mean by, not so good?

21          A     She wouldn't necessarily listen in -- in a parking  
22 lot, her dad would tell her, be careful, she's in a parking  
23 lot.  If they went down to the creek, she wouldn't listen, not  
24 get too close.

25          Q     If you were out in, like, a restaurant, were there



1 ever any occasions when she would run around or --

2 **MR. CERVI:** Objection to the leading.

3 **THE COURT:** Sustained. Ask it a different way,  
4 Mr. Margulis.

5 **BY MR. MARGULIS:**

6 Q Was there anything that you concluded to be  
7 problematic about her behavior when you were inside a  
8 restaurant?

9 A She would -- like, if she went to use the bathroom,  
10 she might run back to the bathroom. She didn't necessarily  
11 listen all the time, because she was very concerned about  
12 taking care of Mason, be --

13 **MR. CERVI:** Objection to the speculation, Your  
14 Honor.

15 **THE COURT:** Sustained.

16 **BY MR. MARGULIS:**

17 Q On the occasions when you would meet midday to  
18 exchange the baby for nursing, did you notice anything about  
19 Olivia's demeanor after the exchange with Katie, of the baby?

20 A Just that it took her a little bit to get on track,  
21 for her behavior and her involvement into the supervised visit  
22 herself.

23 Q Did you ever have occasion to -- strike that.

24 Were there ever -- during those 16 visits -- or  
25 16 days, other than Katie's mother, were there ever any

1 occasions when any other members of her family were present?

2 A Her brother was present.

3 Q Do you remember when and -- well, do you remember  
4 when?

5 A I believe it was at a visit in September.

6 Q And did you meet him?

7 A I did not.

8 Q So when you say he was present, was he in the same  
9 vehicle as Katie or in a different vehicle?

10 A He was in the passenger seat of the van that she would  
11 drive the kids in.

12 Q And was he present during the exchange of the  
13 children?

14 A On one occasion, at both times, and pick up.

15 Q And on any of those occasions did anything occur that  
16 gave you cause for concern relative to Katie's brother?

17 A At the end of a visit, for dropping off Mason, he  
18 laughed out loud as Katie drove away.

19 Q Anything else that you recall?

20 A Not that I recall.

21 Q During the times when you were in the car with Peter,  
22 did you ever have occasion to observe him driving over the  
23 speed limit?

24 A Never.

25 Q Were there ever any occasions when he got pulled over

1 by the police?

2 A No.

3 Q Without repeating the statements of the child, were  
4 there ever any occasions when you observed Olivia and Peter  
5 having any kind of conversation about money?

6 A Yes, I recall.

7 Q And what, if any, conclusions, had you drawn from that  
8 conversation?

9 **MR. CERVI:** Objection, Your Honor. First off,  
10 to relevance. Secondly, to a conclusion about a conversation  
11 about money.

12 **THE COURT:** I'm going to sustain that.

13 **MR. MARGULIS:** Okay.

14 **BY MR. MARGULIS:**

15 Q During the access periods, most of which occurred with  
16 Mason before the exchanges, how would you characterize Mason's  
17 demeanor toward Peter during those visits?

18 A I don't think that Mason misbehaved. He was with his  
19 dad. He's only one year old, so I don't know -- I don't know  
20 how to answer that question. I don't think he was afraid of  
21 his father at all.

22 Q Did Peter ever do anything relative to Mason that  
23 caused you to be concerned for Mason's well being?

24 A No, never.

25 Q Were there ever any times that Mason would eat? That

1 Peter would feed him food?

2 A Yes.

3 Q And did he eat?

4 A Yes.

5 Q Were there any times that the baby would sleep while  
6 with Peter?

7 A Yes. Yup.

8 Q Were there ever any times -- were there ever any  
9 occasions when Mason seemed fussy?

10 A Yes.

11 Q And did you have occasion to see if Peter consoled  
12 him?

13 A He did.

14 Q And based on your observations, did it appear that he  
15 was, in fact, able to console the child?

16 A Yes.

17 **THE COURT:** Is it a good time to break?

18 **MR. MARGULIS:** It's a great time to break.

19 **THE COURT:** Okay.

20 **MR. CAFARELLA:** Thank you, Judge.

21 **THE COURT:** You're welcome.

22 **MR. CAFARELLA:** Thanks, Counselors.

23 **THE COURT:** 11/26 at 1:30, I think is the next  
24 time.

25 **THE CLERK:** Correct.

1           **THE COURT:** Okay. So we'll see you back here  
2 November 26th.

3           **MR. MARGULIS:** I'll be submitting an order  
4 before that.

5           **THE COURT:** Right. An order for the --

6           **MR. MARGULIS:** Subpoenas.

7           **THE COURT:** -- subpoenas, to be limited to just  
8 between mother's and father's cell phone numbers.

9           **MR. MARGULIS:** Right. And I have to  
10 amend -- can we go off the record or --

11           **THE COURT:** I want that on the record.

12           **MR. MARGULIS:** Okay. And I think I was going to  
13 amend the subpoena for the police, because Mr. Cervi wanted me  
14 to add a name, and if he could get me the full name, that  
15 would be -- I think you gave me the last name, only.

16           **THE COURT:** It was a specific police officer,  
17 correct?

18           **MR. MARGULIS:** Right.

19           **THE COURT:** I'm going to have an amended --

20           **MR. MARGULIS:** Judicial subpoena?

21           **THE COURT:** Yeah.

22           **MR. MARGULIS:** Actually, for clarification, is  
23 Mr. Cervi expected to amend the Verizon subpoena?

24           **THE COURT:** It's his subpoena. I --

25           **MR. MARGULIS:** Would --

1                   **THE COURT:** I was asking you, because you were  
2 concerned --

3                   **MR. MARGULIS:** Right.

4                   **THE COURT:** -- about Verizon having it and  
5 acting upon it, so I was offering you the ability to do it.

6                   **MR. MARGULIS:** Fine. Sure.

7                   **THE COURT:** So he's --

8                   **MR. MARGULIS:** Make sure he's aware of that.

9                   **THE COURT:** Mr. Cervi, are you -- does that make  
10 sense to you? Do you have any problem with Mr. Margulis  
11 submitting the subpoena for both the Verizon records and the  
12 Cheektowaga Police records?

13                   **MR. CERVI:** Not at all, Judge.

14                   **THE COURT:** Okay. And then with respect to  
15 the -- what's the other thing we're submitting?

16                   **MR. CAFARELLA:** The modification of the access  
17 order with regards to the dates and times -- or the specific  
18 days and times --

19                   **MR. MARGULIS:** Right.

20                   **THE COURT:** Oh --

21                   **MR. CAFARELLA:** -- of access.

22                   **THE COURT:** -- the temporary order. Do you want  
23 me to just do that myself?

24                   **MR. MARGULIS:** Up to you.

25                   **MR. CERVI:** Sure, Judge.

1                   **MR. MARGULIS:** Sure.

2                   **THE COURT:** I'll do the order that changes the  
3 access timeframes and the pick up and drop off at the  
4 Staybridge. Okay?

5                   **MR. CAFARELLA:** Thank you, Judge.

6                   **THE COURT:** All right. I think we're all set.

7                   **MR. CERVI:** Judge, the only thing, further, the  
8 access for this weekend, I just -- just to try to make  
9 something happen, Judge, because she does have plans to go to  
10 Ohio, I asked my client, can he have access tonight. I know  
11 it's 4:00. There's still time, four or five hours tonight.

12                   **THE COURT:** When is she leaving for Ohio?

13                   **MR. CERVI:** Tomorrow. She can push it back to  
14 12:00 or something and -- just to try to --

15                   **THE COURT:** Can we swap weekends?

16                   **MR. MARGULIS:** Sure, next weekend?

17                   **PETER MARK DIARBAKERLY:** It's the --

18                   **THE COURT:** I --

19                   **MR. MARGULIS:** Right, the weekend after  
20 Thanksgiving.

21                   **MR. CERVI:** All right.

22                   **THE COURT:** So this weekend was supposed to be  
23 dad, which was supposed to be this Saturday and Sunday, the  
24 24th and 25th.

25                   **MR. MARGULIS:** Right.

1                   **THE COURT:** Okay. Mom is going out of -- out  
2 of --

3                   **MR. CERVI:** I'm sorry, 17th and 18th, Judge.

4                   **THE COURT:** Where am I? Off the record.

5                   *(Discussion held off the record.)*

6                   *(Mr. Cafarella exits the courtroom.)*

7                   **THE COURT:** Dad is not going to have access the  
8 17th and 18th of November. November 22nd and -- I'm sorry,  
9 November 24th and 25th, father shall have access, and then  
10 December 1st and 2nd, father will not have access. December  
11 8th and 9th, 15th and 16th, father shall have access, and  
12 you're back on to your regular weekends.

13                   And I'm sorry. Ms. Kratt, you can step down.

14                   **THE WITNESS:** That's all right.

15                   **MR. MARGULIS:** We're good.

16                   **THE COURT:** All right. See you on the 26th and  
17 the 6th, actually. Okay.

18                   *(Proceedings concluded at 4:13 p.m.)*

19  
20 I hereby certify that the foregoing is a true and accurate  
21 transcription of the proceeding.

22

23

24

25

  
ASHLEY KLEINSCHMIDT, NYACR, NYRCR  
OFFICIAL COURT REPORTER