

WRITING SAMPLES

IN THE IOWA DISTRICT COURT FOR SAC COUNTY

BRITTA SADLER,
Plaintiff,

vs.

WILLIAM BAUER,
Defendant

No. DRCV020022

**ORDER DENYING PETITION TO
DISESTABLISH PATERNITY**

While they were in a relationship with one another, Plaintiff Britta Sadler and Defendant William Bauer executed an affidavit of paternity for Britta's child, MMB born in 2014. Both were aware at the time the affidavit was executed that William was not MMB's biological father. Britta now seeks to overcome William's legally established paternity, claiming the signed affidavit was based on duress.

I. Background Facts and Proceedings

Plaintiff Britta Sadler gave birth to MMB in 2014. She and Defendant William Bauer met a couple of years later, although they did not begin dating one another until October or November 2017.

In the spring of 2018, after William had been living with her, MMB, and her nine-year-old daughter CH for a few months, Britta and William signed a paternity affidavit pursuant to Iowa Code section 252A.3A (2019) establishing William as MMB's father. They did this even though they both knew William was not the biological father.

Britta said that when the paternity affidavit was signed, her relationship with William was good. That changed after the affidavit was signed. According to Britta, William began drinking more and became controlling. He limited Britta's time with her family and even took her car keys so that she could not go to work. William would yell at Britta and the girls, sometimes punching the walls or throwing things.

Tensions between Britta and William came to a head in October 2019. When Britta got home from work one evening, William was yelling at CH and calling her names. Britta told him to leave. William did but let Britta's cattle out on his way out. Britta called the police for help getting them back in. Before the police arrived, William pushed a tool box into Britta causing a large bruise on her thigh. William was eventually arrested and charged with domestic abuse assault. A no-contact order was entered prohibiting William from having any contact with Britta. William has not seen or talked to MMB since then.

Britta filed a petition to overcome William's paternity on November 26, 2019. She alleged that William is not MMB's father and that the paternity affidavit was signed under duress. William filed a pro se answer admitting that he is not the father but denying that the paternity affidavit was signed under duress. A guardian ad litem was appointed for MMB, and trial was set for July 29, 2020. Genetic testing was conducted in accordance with section 600B.41 and showed a zero percent probability that William is MMB's biological father.

II. Analysis

Iowa Code section 600B.41A sets forth a procedure to overcome paternity that has been legally established if subsequent blood or genetic testing shows the established father is not the biological father. *Smith v. Widmyer*, 2002 WL 575794, at *2 (Iowa Ct. App. Mar. 13, 2002). "The procedure to overcome paternity is strictly statutory." *Id.* Under the statute, genetic test results are not conclusive on the question of whether legally established paternity should be overcome. *Dye v. Geiger*, 554 N.W.2d 538, 539 (Iowa 1996). Where, as here, paternity was legally established with the signing of an

affidavit of paternity under section 252A.3A, the petitioning party must show the “signed affidavit was based on fraud, duress, or material mistake of fact.” Iowa Code § 600B.41A(3)(f).

Britta relies on the ground of duress, which is not defined in section 600B.41A or cases applying the statute. In a different context, however, duress has been defined as follows:

[A]ny wrongful act of one person that compels a manifestation of apparent assent by another to a transaction without his volition. It has also been defined as compulsion or restraint by which a person is illegally forced to do, or forbear from doing, some act. Generally speaking, duress may be said to exist whenever one, by the unlawful act of another, is induced to make a contract or to perform some other act under circumstances which deprive him of the exercise of free will. Duress destroys the free assent necessary for entering into a contract and indeed prevents the formation of a binding contract.

In re C.K., 315 N.W.2d 37, 43-44 (Iowa 1982). The court in *In re Marriage of Shanks*, 758 N.W.2d 506, 512 (Iowa 2008) distilled the above into “two essential elements to a claim of duress in the execution of a contract: (1) one party issues a wrongful or unlawful threat and (2) the other party had no reasonable alternative to entering the contract.”

In her closing argument, Britta asserted that she signed the paternity affidavit under duress because of William’s controlling and abusive behavior during the relationship. While it is certainly true that behavior existed at the end of the relationship, Britta was fairly clear during her testimony that it did not exist when the paternity affidavit was signed. She testified that although William was sometimes verbally abusive at the beginning of their relationship, he was not controlling or physically abusive until after the paternity affidavit was signed. Britta’s mother confirmed this, testifying that Britta made her own decisions before the affidavit was signed.

When asked why she signed the paternity affidavit, Britta explained that she hoped it would make her relationship with William better. But she did not testify that William forced, compelled, or even asked her to sign the affidavit. Instead, she implied it was a joint decision, countering William's testimony that she asked him to sign the affidavit by testifying that it was not her idea alone. There was simply no evidence of a wrongful or unlawful threat on William's part that compelled Britta to sign the paternity affidavit or that Britta had no reasonable alternative to doing so. See *id.* (finding an ultimatum to either sign a premarital agreement or not get married was not "wrongful or unlawful" because the wife "had the reasonable alternative of cancelling the wedding in the face of such a threat"). While the Court is sympathetic to Britta's plight, it is bound to apply the statute as written to the facts before it. See *Wilson v. Jacques*, 2019 WL 2372091, at *7 (Iowa Ct. App. June 5, 2019) (noting the "court must accept the facts as the court finds them" and "cannot undo what the parties have done").

III. Conclusion

Because Britta failed to establish the paternity affidavit was signed based on duress, the Court cannot overcome William's legally established paternity under section 600B.41(3). Britta's petition is accordingly denied.

Britta's request that court costs, the guardian ad litem's fees, and her attorney's fees be assessed against William is also denied. Iowa Code section 600B.41A(8) states the "costs of testing, the fee of the guardian ad litem, and all court costs shall be paid by the person bringing the action to overcome paternity." This section does not provide for the assessment of attorney fees. See *Hockenberg Equip. Co. v. Hockenberg's Equip. & Supply Co.*, 510 N.W.2d 153, 158 (Iowa 1993) (stating subject to a rare

exception not applicable here, a party generally has no claim to attorney fees in the absence of a statute or contractual provision allow such an award).

Section 600B.26 does authorize the award of reasonable attorney fees to the prevailing party in a proceeding “to determine custody or visitation, or to modify a paternity, custody, or visitation order under this chapter.” Here, however, Britta only sought to overcome William’s paternity. Her request for attorney fees must accordingly be denied. *Compare In re Marriage of Finch*, 2010 WL 2757516, at *5 (Iowa Ct. App. July 14, 2010) (denying established father’s request for attorney fees where he only requested that his legally established paternity be overcome) *with In re Fiscus*, 819 N.W.2d 420, 423-24 (Iowa Ct. App. 2012) (awarding prevailing party attorney fees under section 600B.26 where mother sought not only to overcome paternity under section 600B.41A, “but if unsuccessful, to then utilize section 600B.41A(6)(b) to modify ‘custody, visitation and child support’ provisions of the prior dissolution decree”).

IT IS THEREFORE ORDERED that Plaintiff Britta Sadler’s petition to overcome Defendant William Bauer’s paternity is **DENIED**. The costs of this action, including the guardian ad litem’s fees, are assessed against Britta. Britta shall pay her own attorney fees.

CLERK TO FURNISH COPIES TO:
Counsel of Record
Self-Represented Parties

IN THE IOWA DISTRICT COURT FOR SAC COUNTY

BRITTA SADLER,
Plaintiff,

vs.

WILLIAM BAUER,
Defendant

No. DRCV020022

**ORDER DENYING MOTION TO AMEND
AND ENLARGE**

Plaintiff Britta Sadler has filed a motion to amend and enlarge the Court's August 19, 2020 ruling denying her petition to overcome the legally established paternity of William Bauer to her child, MMB. Although her petition was limited to the ground of duress, Britta now seeks to amend and enlarge the Court's ruling to include the ground of fraud and other related arguments. Assuming without deciding that Britta's reference to fraud in her closing argument was sufficient to present that issue for the Court's review, the Court **FINDS** that Britta failed to prove that ground as well.

I. Whether William Bauer Committed Fraud against Britta Sadler

As outlined in the Court's initial ruling, Iowa Code section 600B.41A(3)(f)(2) provides that where paternity was legally established through the signing of a paternity affidavit, the party seeking to overcome paternity must show the "signed affidavit was based on fraud, duress, or material mistake of fact." In discussing the ground of fraud in section 600B.41A(3)(f)(2), the Iowa Court of Appeals stated that "fraud requires 'a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her own detriment.'" *In re Hendrickson*, 2013 WL 6388649, at *4 (Iowa Ct. App. Dec. 5, 2013) (quoting Black's Law Dict. 731 (9th ed. 2009)). In a different context cited by Britta, specifically a case involving a putative father's paternity

fraud action against a biological mother, the Iowa Supreme Court identified the elements of a common law fraud claim as follows:

“(1) [the] defendant made a representation to the plaintiff, (2) the representation was false, (3) the representation was material, (4) the defendant knew the representation was false, (5) the defendant intended to deceive the plaintiff, (6) the plaintiff acted in [justifiable] reliance on the truth of the representation . . . , (7) the representation was a proximate cause of [the] plaintiff’s damages, and (8) the amount of damages.”

Dier v. Peters, 815 N.W.2d 1, 7 (Iowa 2012) (citation omitted). Under either test, Britta failed to carry her burden of proof.

The false representation identified by Britta was that William told her “he intended to marry her, that he would be a good parental figure for the minor child, and that they would have a good life.” There was no evidence that William made this representation with the knowledge that it was false or in reckless disregard of its truth. *Dier*, 815 N.W.2d at 8. Further, it is difficult to see how Britta could have justifiably relied upon this representation considering her main argument in closing at trial was that she signed the paternity affidavit under duress because of William’s volatile, controlling, and abusive behavior during their relationship. See *Junk Bros. Land & Cattle v. Buchanan Cnty.*, 2020 WL 5230459, at *2 (Iowa Ct. App. Sept. 2, 2020) (noting that under the doctrine of judicial estoppel, a party cannot assert inconsistent positions in the same proceeding).

II. Whether William Bauer Defrauded the State, the Biological Father, and the Child

In the alternative, Britta argues that when William executed the paternity affidavit knowing that he was not the biological father of MMB, he perpetrated a fraud on the State, MMB’s biological father, and MMB herself. The same argument was raised and

rejected by the Iowa Court of Appeals in *Hendrickson*, 2013 WL 6388649, at *4 (Iowa Ct. App. Dec. 5, 2013). Britta argues this Court can reach a different conclusion because *Hendrickson* is an unpublished opinion. See Iowa R. App. P. 6.904(2)(c) (“Unpublished opinions or decisions shall not constitute controlling legal authority.”). While *Hendrickson* may not be controlling legal authority under rule 6.904(2)(c), it is certainly persuasive and guiding authority for this lower court as are the out-of-state decisions it relied upon. See, e.g., *In re H.H.*, 879 N.E.2d 1175, 1177 (Indiana Ct. App. 2008) (“We do not believe the legislature intended this statute to be used to set aside paternity affidavits executed by a man and woman who both knew the man was not the biological father of the child.”).

The Court recognizes the quandary presented by this case, where a man who is not a child’s biological father and was involved in her life for only a short period of time remains her legally established father. But that is a situation best addressed by the legislature, not this Court who must apply the language of the statute as it is written to the facts as it has found them. *Treimer v. Lett*, 587 N.W.2d 622, 624 (Iowa Ct. App. 1998) (“The procedure to overcome paternity is strictly statutory.”); see also *Callender v. Skiles*, 591 N.W.2d 182, 185 (Iowa 1999) (stating paternity can be determined in equity under Iowa Code chapters 252A or 598, but under chapter 600B, it is determined at law).

III. Whether Iowa Code § 600B.41A is Unconstitutional

Britta finally argues the statute is “unconstitutional to the extent that it does not require notice be given to all putative fathers nor does it provide constitutional protection to putative fathers and children in certain cases where paternity is established under

Iowa Code section 252A.3A.” This constitutional challenge was raised for the first time in Britta’s post-trial motion and is therefore not properly before the Court now.

“A party challenging a statute on constitutional grounds must do so at the earliest available time in the progress of the case.” *State v. McCright*, 569 N.W.2d 603, 607 (Iowa 1997). “Claims cannot be raised for the first time in a rule 1.904(2) motion.” *State v. Rowley*, 2006 WL 623640, at *2 (Iowa Ct. App. Mar. 15, 2006); *see also Harvest Credit Mngmnt. VII, L.L.C. v. Lucas*, 2009 WL 1676660, at *2 (Iowa Ct. App. June 17, 2009) (“A motion pursuant to rule 1.904(2) is not properly used as a method to introduce a new issue, not previously raised before the court.”). The Court additionally questions whether Britta has standing to raise this constitutional challenge on behalf of the putative biological father. *See State v. Newton*, 929 N.W.2d 250, 255 (Iowa 2019) (“Ordinarily, if a statute is not unconstitutional as applied to the litigant who brings the claim, the litigant has no standing to argue the statute as unconstitutional on its face.”).

In any event, the Court believes Britta’s due process claim fails on its merits. Britta is correct that in *Callender*, 591 N.W.2d at 190, the Iowa Supreme Court held a biological parent has a liberty interest in challenging the legally established paternity of another. To that end, *Callender* found section 600B.41A “unconstitutional under our state constitution to the extent it denies [a putative father] standing to overcome paternity.” 591 N.W.2d at 192. Britta seizes on the above in arguing the “Iowa Constitution mandates that Kent [the putative father] be given notice” of her petition to overcome legally established paternity.

The problem with this argument is that section 600B.41A(3)(c) does require that notice of the action be “served on any parent of the child not initiating the action.” *See*

Iowa Code § 600A.2(15) (defining “parent” as a “father or mother of a child, whether by birth or adoption”); accord Iowa Code § 232.2(39) (defining “parent” in chapter 232 proceedings to mean “a biological or adoptive mother or father of a child”). Britta, as the one who initiated the action, should have accordingly served notice of her petition on the person she knows or believes to be MMB’s biological father. Her failure to do so would have been another reason to deny her petition. See Iowa Code § 600B.41A(3) (“Establishment of paternity may be overcome under this section if *all* of the following conditions are met. . . . Notice of the action to overcome paternity is served on any parent of the child not initiating the action. . . .”).

Further, Britta argues that if this Court “interpret[s] fraud to mean common law fraud,” as she herself advocated the Court should do, “then the putative father, even with notice, could never successfully challenge paternity when the established parents signed an affidavit of paternity knowing it was false.” The Court does not believe this to be categorically true. As the court in *Hendrickson*, 2013 WL 6388649 observed, it was “not presented with, and do[es] not interpret [section 600B.41A(3)(f)(2)] in the context where the biological father seeks to disestablish the rights of another individual whose paternity was established by affidavit.” The same is true here.

IV. Conclusion

For the foregoing reasons, the Court finds that Plaintiff Britta Sadler’s motion to amend and enlarge must be **DENIED**.

IT IS SO ORDERED.

CLERK TO FURNISH COPIES TO:

Counsel of Record
Self-Represented Parties

IN THE IOWA DISTRICT COURT FOR WEBSTER COUNTY

<p>MELISSA PATERSON, Individually and as Administrator of the Estate of WILLIAM LAVERNE PATERSON Plaintiff,</p> <p>vs.</p> <p>WOODRUFF CONSTRUCTION, LLC, Defendant.</p>	<p>No. LACV319495</p>
<p>WOODRUFF CONSTRUCTION, LLC, Defendant/Third-Party Plaintiff,</p> <p>vs.</p> <p>RILEY-ARMSTRONG PLUMBING AND HEATING, INC., Third-Party Defendant.</p>	<p>ORDER</p>

The most recent summary judgment motion filed by Third-Party Defendant Riley-Armstrong Plumbing and Heating, Inc. requires the Court to delve into the complicated morass of indemnity in construction contracts. After doing so, the Court concludes the motion must be denied.

I. Background Facts and Procedural History

On August 14, 2015, William Laverne Paterson was killed in a trench collapse while working for Riley-Armstrong on a construction project at the Marian Home Care Center. Woodruff Construction, LLC was the general contractor on the project. Riley-Armstrong was one of Woodruff's subcontractors.

Paterson's surviving spouse, Melissa, and his estate (collectively Paterson) sued Woodruff on June 27, 2017. The petition alleged that Woodruff "had a non-delegable

duty to provide safety on the job site at the time William was injured/killed” and that Woodruff was negligent in the following ways: (1) failing to maintain a reasonably safe work premises; (2) failing to provide proper site safety, supervising of contractors, and shoring and sheeting; and (3) failing to act as a reasonable general contractor. Woodruff filed an answer denying the allegations against it, as well as a third-party petition against Riley-Armstrong.

Woodruff’s third-party petition alleged that in its subcontract with Woodruff, Riley-Armstrong had agreed to “indemnify Woodruff for, among other things, ‘all claims, actions, suits, awards, damages, costs, or other liability arising out of or related to . . . (Riley-Armstrong’s) work, services, conduct, action, inaction, errors, or omissions.’” Woodruff further alleged that Riley-Armstrong was negligent and that its negligence was the proximate cause of Paterson’s death. Woodruff accordingly requested that “the fault of Riley-Armstrong should be determined, and Riley-Armstrong should be made to indemnify Woodruff for any fault determined to be attributable to Riley-Armstrong and its employees, including the Plaintiff’s Decedent.”

On October 8, 2018, Riley-Armstrong sought summary judgment against Woodruff, arguing that Woodruff could not seek contribution from it because there was no common liability between the parties due to the exclusivity provision of Iowa’s Workers’ Compensation Act. Riley-Armstrong further argued the indemnification provision of the parties’ subcontract was inapplicable under both the contract language and Iowa Code section 537A.5(2) because the underlying petition filed by Paterson’s estate and his widow only alleged that Woodruff was at fault in the accident. Woodruff resisted this motion and filed its own partial summary judgment motion against Riley-

Armstrong. In that motion, Woodruff sought a determination from the Court “that the various clauses in the subcontract requiring Riley to indemnify Woodruff for Riley’s negligence is valid and enforceable, and is not in any way prohibited by Iowa Code Section 537A.5” and “that the clause in the subcontract in which Riley waives any right to rely on worker’s compensation exclusivity is valid and enforceable and permits, as a matter of law, Woodruff’s third-party action for indemnity as presented herein.”

On November 26, 2018, the Court entered an order granting Riley-Armstrong’s motion for summary judgment and denying the motion filed by Woodruff. The Court found as follows:

[T]he plaintiff’s lawsuit against Woodruff specifically alleges negligence concerning breach of non-delegable duties Woodruff owed plaintiff’s decedent. There is no allegation of vicarious liability. This court concludes that Riley’s point is well taken. For plaintiff to prevail against Woodruff the plaintiff must prove Woodruff’s negligence and [then] indemnity is not permitted per *Truscheff v. Abell-Howe Co.*, 239 N.W.2d 116, 128 (Iowa 1976), and if plaintiff fails to prevail against Woodruff then there will be nothing to indemnify.

In light of the above, the Court dismissed the third-party petition against Riley-Armstrong.

Woodruff filed a “Notice of Appeal or Alternative Application for Interlocutory Appeal” from this order. In resistance to Woodruff’s application, Riley-Armstrong asserted the November 26, 2018 order was interlocutory and should not be reviewed by the Iowa Supreme Court in advance of the final judgment in this case. Our supreme court agreed and on January 9, 2019, issued an order denying Woodruff’s application for interlocutory appeal.

Following issuance of procedendo on January 28, 2019, Paterson moved to amend the petition to assert the following new allegations: (1) “Woodruff has alleged Riley was negligent and that Riley’s negligence caused William’s death and injury”; (2)

Woodruff was negligent in “failing to properly supervise its employees, agents, and subcontractors, including but not limited to Riley”; and (3) “Woodruff is vicariously liable for the negligence of its employee, agents, and subcontractors.” The Court granted the motion to amend, and on February 27, 2019, Woodruff filed an answer to the amended petition and a renewed third-party petition against Riley-Armstrong.

Like in its first third-party petition, Woodruff again asserted a negligence claim against Riley-Armstrong and requested indemnification “for any fault determined to be attributable to Riley-Armstrong and its employees, including the Plaintiff’s decedent.” Woodruff also added a breach of contract claim against Riley-Armstrong for various alleged violations of its subcontract, including failing to comply with Woodruff’s safety rules and OSHA regulations and failing to defend and indemnify Woodruff for the negligence of Riley-Armstrong and its employees.

Riley-Armstrong filed an answer to the second third-party petition and moved to sever the trial on the breach of contract claim from the trial on Paterson and Woodruff’s tort claims. The Court granted that motion on June 4, 2019. Prior to the trial on the tort claims, Paterson and Woodruff reached a settlement on the wrongful death claim, leaving only the two claims raised Woodruff’s third-party petition against Riley-Armstrong at issue.

On July 30, 2019, Riley-Armstrong filed its second motion for summary judgment. This motion was limited to Woodruff’s request for indemnification for Riley-Armstrong’s negligence in the accident, labeled as Count I in the third-party petition. In support of its motion, Riley-Armstrong asserts that (1) the Court’s November 26, 2018 ruling on Woodruff’s indemnification claim should be given preclusive effect under the law of the

case doctrine; and (2) Paterson's new assertion that Woodruff is vicariously liable for the alleged negligence of Riley-Armstrong is without merit because "[a]s a matter of law the contractor/subcontractor relationship does not give rise to vicarious liability."

Woodruff filed a resistance to this motion, asserting that contrary to Riley-Armstrong's arguments otherwise, it is "seek[ing] contractual indemnity and not contribution." Woodruff contends a claim for contractual indemnity is allowed under the parties' subcontract, as well as the new allegations of vicarious liability, and is not barred by Iowa Code section 537A.5(2). With respect to the issue of vicarious liability, Woodruff argues an exception to the general rule relied upon by Riley-Armstrong applies, specifically that a general contractor can be found vicariously liable for the acts of its subcontractor where the general contractor's "involvement in overseeing the construction [was] substantial." In reply, Riley-Armstrong continues to characterize Woodruff's claim against it as one for contribution rather than indemnity, which it asserts should lead this Court to the conclusion that Woodruff's claim must be dismissed as a matter of law.

II. Summary Judgment Standard

Summary judgment is appropriate only when the moving party establishes that the record presents no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Banwart v. 50th St. Sports, L.L.C.*, 910 N.W.2d 540, 544 (Iowa 2018). In examining a motion for summary judgment, the record is viewed in a light most favorable to the nonmoving party. *Banwart*, 910 N.W.2d at 545. The court must "draw all legitimate inferences the evidence bears that will establish a genuine issue of material facts." *Id.* Even where the facts are undisputed,

“summary judgment is not proper if reasonable minds could draw different inferences from them and thereby reach different conclusions.” *Id.* (citation omitted).

III. Analysis

A. The Law of the Case Doctrine Does Not Apply.

The Court first addresses Riley-Armstrong’s assertion that the November 26, 2018 summary judgment ruling controls the result of the current summary judgment motion under the law of the case doctrine. This doctrine stands for the proposition that “an *appellate decision* becomes the law of the case and is controlling on both the trial court and on any further appeals in the same case.” *State v. Ragland*, 812 N.W.2d 654, 658 (Iowa 2012) (citation omitted) (emphasis added); *accord Bahl v. City of Asbury*, 725 N.W.2d 317, 321 (Iowa 2006) (“[I]ssues decided *by an appellate court* generally cannot be reheard, reconsidered, or relitigated.” (emphasis added)).

As is clear from the foregoing, the law of the case doctrine “applies only to issues that were raised and reached in the first appeal.” *Cawthorn v. Catholic Health Initiatives Iowa Corp.*, 806 N.W.2d 282, 286 (Iowa 2011). Although Woodruff attempted to appeal the Court’s November 26, 2018 ruling in advance of final judgment, the Iowa Supreme Court denied that request. There has accordingly been no appellate decision that controls the result of the issues raised in Riley-Armstrong’s second summary judgment motion. Nor has there been a final order from this Court on the issues raised by Riley-Armstrong, a fact which Riley-Armstrong recognized in its resistance to Woodruff’s notice of appeal where it argued the November 26, 2018 ruling was interlocutory.

“An interlocutory order is not the law of the case because the court is free to change it at a later time.” *Ahls v. Sherwood/Division of Harsco Corp.*, 473 N.W.2d 619, 624 (Iowa

1991); see also *Allied Mutual Casualty Co. v. Long*, 107 N.W.2d 682, 831 (Iowa 1961) (noting that a “trial court may, at the same term, change or modify an order or judgment”). So long as this Court “has jurisdiction over the case and the parties, it has authority to correct its own perceived errors.” *Madden v. City of Eldridge*, 661 N.W.2d 134 (Iowa 2003). This Court is thus well within its authority to reconsider any issues Riley-Armstrong contends were conclusively established in the earlier summary judgment ruling.

B. Woodruff is Seeking Express Contractual Indemnity from Riley-Armstrong, Not Contribution.

The next issue before the Court is whether Count I of Woodruff’s third-party petition is seeking contribution or indemnity from Riley-Armstrong. The gravamen of Riley-Armstrong’s argument is that because Woodruff is seeking to apportion fault among the parties, it is really seeking contribution and not indemnity. The Court disagrees.

“The right of one party, who has satisfied a claim, to seek reimbursement from another party can generally be pursued by three interrelated common law principles: indemnity, contribution, and subrogation.” *State ex rel. Palmer v. Unisys Corp.*, 637 N.W.2d 142, 149 (Iowa 2001). “The doctrine of contribution rests on the equitable principle that the parties subject to common liability should contribute equally to the discharge of that liability.” *Id.* at 152. “Common liability exists when the injured party has a legally cognizable remedy against both the party seeking contribution and the party from whom contribution is sought.” *Id.* at 153 (citation omitted). Indemnification, on the other hand, does not require common liability.¹ Roger W. Stone & Jeffrey A. Stone,

¹ Although common liability was at one time required under an active-passive negligence theory of indemnity, our supreme court has since abandoned that theory of indemnity. See *Am. Trust & Savings Bank v. U.S. Fidelity & Guar. Co.*, 439 N.W.2d 188, 190 (Iowa 1989); see also *Wells Dairy, Inc. v. Am.*

Indemnity in Iowa Construction Law, 54 Drake L. Rev. 125, 129 (Fall 2005) (“Indemnity . . . is permitted in circumstances where there is no common liability to the injured party, provided there is an agreement, relationship, or duty between the indemnitor and indemnitee that allows for indemnity.”).

Riley-Armstrong has taken great pains to try to establish that Count I of Woodruff’s third-party petition is really a claim for contribution disguised as indemnification. This is because our supreme court has long recognized that there is no common liability between the employer of an injured worker and a third party who has contributed to the employee’s injury because of the exclusive remedy provisions of the Workers’ Compensation Act. *Iowa Power & Light Co. v. Abild Constr. Co.*, 144 N.W.2d 303, 306 (Iowa 1966). Thus, if Riley-Armstrong is correct that Woodruff is seeking contribution rather than indemnification, that claim would be barred due to the lack of common liability between the two. Indemnity claims, however, are still permitted against an employer in the absence of common liability if there is an indemnification agreement or breach of an independent duty. *Id.* at 309-10 (approving of prior cases holding “that the Iowa Workmen’s Compensation Law was not intended to take away all a third party’s rights to sue an employer” and that the “liability of the employer may be found in a proper case for indemnity” (citation omitted)); see also *Evans v. McComas-Lacina Constr. Co.*, 641 N.W.2d 841, 844 (Iowa 2002) (“[W]orkers’ compensation does not function as a complete bar to suit against an employer by a third party where the employer has breached an independent duty to the third party.”).

Indus. Refrigeration, Inc., 762 N.W.2d 463, 473 (Iowa 2009) (“The requirement of common liability was a rule that applied in the context of the now abandoned active-passive negligence branch of equitable indemnity.”).

Woodruff's request for indemnification from Riley-Armstrong is quite clearly based on the express indemnification provisions in the subcontract between the two.² In those provisions, Riley-Armstrong agreed to indemnify Woodruff for any liability arising from Riley-Armstrong's own negligence. Our supreme court has approved of such agreements, holding in *Evans* 641 N.W.2d at 844 that "contractual indemnity is not disfavored and ordinarily will be enforced between the parties according to its terms." (Citation omitted.)

Like here, *Evans* involved a general contractor seeking indemnification from a subcontractor whose employee was injured. The indemnification agreement in *Evans* provided as follows:

"The Sub-contractor shall protect and indemnify said Contractor against any loss or damage suffered by any one arising through the negligence of the Sub-contractor, or those employed by him or his agent or servants; he shall bear any expense which the Contractor may have by reason thereof, or on account of being charged therewith"

Evans, 641 N.W.2d at 844. In construing this provision and finding it enforceable, the court found it "included clear language requiring Able [the subcontractor] to indemnify

² While the parties' subcontract contains several indemnification provisions, the one primarily relied upon by Woodruff and partially quoted in its third-party petition is taken from paragraph 14 of that subcontract and provides as follows:

Subcontractor shall hold Owner, Woodruff, their respective directors, officers, employees, agents, sureties, servants, subcontractors, and suppliers harmless and shall defend, pay, and indemnify Owner, Woodruff, and their respective directors, officers, employees, agents, sureties, subcontractors, suppliers, and servants for 100% of any and all claims, actions, suits, awards, damages, costs, or other liability arising out of or related to (i) Subcontractor's breach of any term, condition, or representation in the Subcontract Documents or (ii) any work, services, conduct, action, inaction, errors, or omissions of Subcontractor or (iii) work, services, conduct, action, inaction, errors, or omissions of any architect, engineer, or design professional of Subcontractor or (iv) work, services, conduct, action, inaction, errors, or omissions of any of subcontractors, suppliers, or other entities hired by Subcontractor or (v) work, services, conduct, action, inaction, errors, or omissions of any third-party hired by any of Subcontractor's subcontractors or suppliers. . . . Subcontractor's obligations under this Section apply in all circumstances except those where Woodruff is completely and entirely at fault.

McComas [the general contractor] for any loss or damage sustained as a result of Able's negligence." *Id.* at 845. The court rejected the subcontractor's argument that the general was seeking indemnification for the general's own negligence, which would be barred by the holding in *Trushcheff v. Abell-Howe Co.*, 239 N.W.2d 116, 119 (Iowa 1976), stating:

Unlike the contractor in *Trushcheff*, McComas does not seek indemnity from Able based on McComas' own negligence. If this were the case, our prior case law suggests McComas would be precluded from seeking contractual indemnity. . . . However, this is not the situation we have before us because McComas seeks indemnity based on Able's negligence—a circumstance explicitly address in paragraph eleven of the subcontract. Because McComas seeks indemnity purely for Able's acts of negligence, paragraph eleven may apply to this case.

Id. at 846.

The Court believes this case is factually on all fours with *Evans*. Paterson's amended petition alleged Woodruff was vicariously liable for the negligence of its subcontractors. In its reply brief in the first summary judgment proceedings, before Paterson's petition was amended, Riley-Armstrong recognized indemnity would be recoverable under a vicarious liability theory and cited *Evans* in asserting: "In the construction contractor/sub-contractor context, if an employee of the subcontractor sues the general contractor claiming that the general is vicariously liable for the sub's negligence, the general may seek indemnity from the sub if the subcontract permits an indemnity action." 10/17/18 Reply Br. at 4. The parties' subcontract allows Woodruff to be indemnified by Riley-Armstrong for Riley-Armstrong's own negligence, which is what Woodruff is seeking in Count I of its third-party petition.

Riley-Armstrong nevertheless argues that because Woodruff is seeking recovery for only Riley-Armstrong's negligence, and in the process is asking for fault to be apportioned among the parties, Woodruff is as a matter of law requesting contribution.

While Riley-Armstrong is correct that indemnification claims generally “shift the entire liability or blame from one legally responsible party to another,” *Wells Dairy, Inc. v. Am. Indus. Refrigeration, Inc.*, 762 N.W.2d 463, 469 (Iowa 2009), our appellate courts have approved of the apportioning of fault in indemnification claims based upon express contracts. See *Constr. Servs., Inc. v. Eco Tech Constr., L.L.C.*, 2010 WL 1578752, at *3 (Iowa Ct. App. Apr. 21, 2010) (discussing a contractual indemnity claim where the jury was required to allocate fault between the subcontractor employer of the injured worker and the general contractor on the project); *Sward v. Nelson Constr., Inc.*, 2003 WL 118206, at *5 (Iowa Ct. App. Jan. 15, 2003) (affirming trial court’s conclusion that the only reasonable way to determine each parties’ liability under the contract, while at the same time prohibiting the general contractor from recovering indemnification from a subcontractor for the general’s own negligence, was to permit the jury to assign fault to the parties); *Martin & Pitz Assocs., Inc. v. Hudson Constr. Servs., Inc.*, 602 N.W.2d 805, 806 (Iowa 1999) (approving of similar method of allocating fault by jury in indemnification case involving an employer, injured worker, and general contractor). Other jurisdictions have referred to this concept as “partial indemnification” and approved of it as well. See, e.g., *Hull v. Chevron U.S.A., Inc.*, 812 F.2d 590, 592 (10th Cir. 1987).

As these cases make clear, the mere request to allocate fault in an indemnification case such as this does not convert the claim into one for contribution. Such a method is in fact in accord with Iowa Code section 537A.5(2),³ which prohibits an indemnitee in a

³ The full text of section 537A.5(2) is as follows:

[A] provision in a construction contract that requires one party to the construction contract to indemnify, hold harmless, or defend any other party to the construction contract, including the indemnitee’s employees, consultants, agents, or others for whom the indemnitee is responsible, against liability, claims, damages, losses, or expenses, including attorney fees, to the extent caused by or resulting from the negligent act or omission of the indemnitee or of the indemnitee’s employees, consultants, agents, or

construction contract from recovering indemnification for the indemnitee's own negligence. Allocating fault guards against that very scenario. The Court accordingly rejects Riley-Armstrong's characterization of Woodruff's claim against it as one for contribution.

C. *Genuine Issues of Material Fact Exist as to Whether Woodruff Suffered Any Loss as a Result of Riley-Armstrong's Negligence.*

Riley-Armstrong next argues that Woodruff's claim for indemnification must be dismissed because in the underlying claim, Paterson could not have held Woodruff vicariously liable for Riley-Armstrong's negligence as a matter of law. Without the claim of vicarious liability, according to Riley-Armstrong, Paterson's petition was limited to allegations that Woodruff alone was negligent. If this argument holds, Woodruff's claim for indemnification would fail under both the express indemnification provision in the parties' subcontract and section 537A.5(2). *See, e.g., Martin & Pitz Assocs., Inc.*, 602 N.W.2d at 809 (affirming district court dismissal of indemnification claim where in the underlying action, the indemnitee defended against a claim limited to its own negligence).

Turning then to whether the claim of vicarious liability fails as a matter of law, Riley-Armstrong relies upon the general rule that "an employer of an independent contractor is not vicariously liable for injuries arising out of the contractor's negligence." *Robinson v. Poured Walls of Iowa, Inc.*, 553 N.W.2d 873, 875 (Iowa 1996). This general rule, however, is "riddled with a number of common-law exceptions that have practically subsumed the rule." *Kragel v. Wal-Mart Stores, Inc.*, 537 N.W.2d 699, 702 (Iowa 1995) (citation omitted); *see also* Restatement (Second) of Torts §§ 410-29 (listing exceptions).

others for whom the indemnitee is responsible, is void and unenforceable as contrary to public policy.

Riley-Armstrong, for the most part, ignores these exceptions due to its belief that Paterson's "sole basis for claiming that Woodruff is vicariously liable for Riley-Armstrong's alleged torts is the bare fact of a contractor/subcontractor relationship." Upon viewing the record in the light most favorable to Woodruff, the Court concludes otherwise.

In response to an interrogatory requesting Paterson to set forth the basis for its vicarious liability claim against Woodruff, Paterson stated:

On August 14, 2015, Woodruff was acting as the general contractor at a construction project at the Marian Home Care Center ("Marian Home"). *Woodruff retained control of the work and/or the worksite* and Woodruff assumed a contractual duty for site safety. Pursuant to the Marian Home Project manual, Woodruff was contractually obligated to "provide shores and sheeting as necessary for protection of work and safety of personnel." Riley was acting as a subcontractor of Woodruff at the Marian Home work site and assumed contractual duties to Woodruff. *Both Riley and Woodruff were cited with OSHA violations.*

Riley is contractually obligated to Woodruff because of Riley's negligence. Woodruff had a non-delegable duty for site safety and is ultimately responsible.

(Emphasis added.)⁴ This theory of retained control, italicized above, is repeated in paragraph 8 of Paterson's amended petition, which alleged that on the date Paterson was killed "Woodruff retained control of the work and/or the worksite."

⁴ In other interrogatory answers, Paterson expounds on what it believes to be Riley-Armstrong's negligence in the accident, specifically that

William Paterson had no reason to be in the trench immediately before, or at the time of, the fatality. The facts imply that he was standing near the west edge of the trench when it caved in. Kyle Reeder [a co-worker] had left the scene to get parts and perhaps stop for lunch. William Paterson was probably on his lunch break at the time of the fatality. . . . The OSHA records indicate Riley-Armstrong did not provide safety training to its worker.

An expert hired by Paterson intended to testify that Riley-Armstrong "violated general safety and OSHA Standards by failing to provide trench/excavation protection to Mr. Paterson, and Woodruff Construction, LLC shared that responsibility with Riley-Armstrong."

It is clear from the foregoing that Paterson's vicarious liability claim against Woodruff relied upon the retained control exception to the general rule of nonliability set forth above. Restatement (Second) of Torts § 414 sets forth this exception as follows:

One who entrusts work to an independent contractor, but who retains the control of any part of the work, is subject to liability for physical harm to others for whose safety the employer owes a duty to exercise reasonable care, which is caused by his failure to exercise his control with reasonable care.

A comment to the rule explains that the retained control exception

is usually, though not exclusively, applicable when a principal contractor entrusts a part of the work to subcontractors, but himself or through a foreman superintends the entire job. In such a situation, the principal contractor is subject to liability if he fails to prevent the subcontractors from doing even the details of the work in a way unreasonably dangerous to others.

Other courts have found indemnity from a subcontractor employer appropriate in cases where the underlying claim against the general contractor is founded on a theory of retained control. See, e.g., *Eischeid v. Dover Constr., Inc.*, 217 F.R.D. 448, 463 n.4 (N.D. Iowa 2003); *Heckart v. Viking Exploration, Inc.*, 673 F.2d 309, 312-13 (10th Cir. 1982).

Riley-Armstrong attempts to save itself from the above by asserting the "lack of common law vicarious liability in the present circumstances is conclusively confirmed by the Supreme Court's ruling in *Robinson v. Poured Walls of Iowa, Inc.*, 553 N.W.2d 873, 877 (Iowa 1996)." That case, however, discussed a different exception to the general rule of nonliability for employers of independent contractors, namely Restatement (Second) of Torts § 343, which provides "[a] possessor of land is subject to liability for physical harm caused to his invitees." The two exceptions, although both involving issues of control, are separate and distinct doctrines. Compare Restatement (Second)

of Torts § 343 with Restatement (Second) of Torts § 414; see also *Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 813 (Iowa 1994). Thus, the fact that Paterson “did not plead that Woodruff was a ‘possessor of the real estate’” or that “Woodruff was liable due to a ‘condition on the premises’” is not determinative since Paterson did clearly plead that Woodruff “retained control of the work and/or the worksite.” In any event, the key inquiry under either doctrine when applied to general and subcontractors “is the amount of control retained over the subcontractor’s work.” *Piper v. Jerry’s Homes, Inc.*, 2003 WL 22199580, at *2-3 (Iowa Ct. App. Sept. 24, 2003).

In light of the foregoing, the Court concludes that genuine issues of material fact exist as to whether Woodruff suffered any loss attributable to Riley-Armstrong’s negligence under the vicarious liability theory pled in Paterson’s amended petition.

IV. Conclusion

In sum, to the extent the Court’s earlier summary judgment ruling touched on any of the issues raised in Riley-Armstrong’s current summary judgment motion, the Court finds the law of the case doctrine does not apply to prohibit it from deciding those issues anew. The Court further finds that despite Woodruff’s request for an apportionment of fault among the parties, it is seeking express contractual indemnification from Riley-Armstrong, not contribution. Iowa Code section 537A.5(2) does not apply to bar Woodruff’s indemnification claim because Woodruff has carefully confined that claim to reimbursement for money it paid out due to Riley-Armstrong’s own negligence. Finally, the Court finds that Paterson’s vicarious liability claim against Woodruff does not fail as a matter of law under the retained-control exception to the general rule of nonliability for employers of independent contractors.

IT IS THEREFORE ORDERED that Riley-Armstrong's motion for partial summary judgment on Count I of Woodruff's third-party petition is **DENIED**.

IT IS FURTHER ORDERED that this matter is referred to Court Administration for a trial scheduling conference. The Court notes that under a prior severance order, two trial dates will need to be obtained for the two different counts of Woodruff's third-party petition against Riley-Armstrong unless the parties agree otherwise.

CLERK TO FURNISH COPIES TO:

Counsel of Record
Court Administration

IN THE IOWA DISTRICT COURT FOR CARROLL COUNTY
In re the Marriage of EMILY FISHBURN and TIMOTHY FISHBURN

<p>Upon the Petition of EMILY FISHBURN,</p> <p style="text-align: center;">Petitioner</p> <p style="text-align: center;">and concerning</p> <p>TIMOTHY FISHBURN,</p> <p style="text-align: center;">Respondent</p>	<p style="text-align: center;">Case Nos. CDDM039366</p> <p style="text-align: center;">DECREE OF DISSOLUTION OF MARRIAGE</p>
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In this short marriage marred by domestic abuse and alcoholism, Petitioner Emily Fishburn seeks sole legal custody of the parties' two-year-old son and supervised visitation for Respondent Timothy Fishburn. The Court concludes her requests should be granted for the reasons that follow.

FINDINGS OF FACT

Timothy and Emily Fishburn were married on March 22, 2019. They have one child together—OKF, born in 2018. Timothy and Emily first met at the end of August 2016 when Timothy was in Iowa for work. He is employed as a natural gas pipefitter, which requires frequent travel. Timothy's home base is in Oklahoma. Emily has lived in Templeton, Iowa, for sixteen years. Her parents own a diesel truck business in Carroll where Emily works part-time. She is also employed at a local whiskey distillery.

Timothy and Emily both have a history of substance abuse issues. In 2011, Emily lost custody of her son Vinson when she was arrested on drug-related charges. Vinson has resided in the care of Emily's sister since then. Emily's contact with Vinson has increased in recent years as Emily has taken steps to address her substance abuse. These steps seem to have been prompted in part by the birth of the parties' son in 2018.

Timothy's substance abuse, however, has continued unabated since OKF's birth. Early on in their relationship, Timothy told Emily that he had six convictions for operating while intoxicated (OWI). Because of the travel involved with his work, Timothy's OWIs have occurred in a number of different states. According to records submitted by Emily, Timothy was convicted of OWI and leaving the scene of an accident in October 2009 in Oklahoma. Ex. 14. He was convicted of driving while revoked in Oklahoma in 2011 and again in 2013. Ex. 15, 16. Emily believes there were other OWI convictions in Kansas and another state sometime after those Oklahoma charges.

Emily was not aware of the details of the OWIs Timothy received before they began their relationship, but she did testify about an incident on January 3, 2018, when Timothy totaled her vehicle after driving while intoxicated. Ex. 17, 38. The couple was staying at a hotel in Ohio where Timothy was stationed at the time. Timothy left for work early in Emily's vehicle. He started drinking on his way home later that afternoon. Timothy missed his exit and drove into a concrete barrier. Emily testified that the officer who responded to the accident told her that he smelled alcohol in the vehicle when he stopped to help Timothy. He did not arrest Timothy for operating while intoxicated, however, because he felt that Timothy would be a medical risk at the jail. Timothy was instead cited for failure to maintain control and billed for the damage to the barrier he struck. Ex. 9, 10, 17.

Timothy was arrested for another OWI on June 30, 2019, while the couple and their son were in Wyoming for Timothy's work. The criminal complaint states that at about 1:30 p.m. that day, a police officer observed Timothy asleep in his vehicle, which was stopped in an intersection in between two lanes of traffic in a busy downtown area. Ex.

19. After failing field sobriety tests, Timothy's breathalyzer test indicated a blood alcohol content of .256. Emily bailed him out of jail, and the couple remained in Wyoming until July 2019 when Timothy's criminal charge was resolved.

Timothy and Emily then returned to Emily's home in Templeton with OKF. In September 2019, Timothy left for a job in Pennsylvania while Emily and OKF stayed behind in Iowa. Timothy apparently began drinking while driving to Pennsylvania. After receiving multiple calls from concerned citizens about an erratic driver on the interstate, Timothy was finally picked up at a toll booth in Indiana and charged with operating while intoxicated. Ex. 20.

This was somewhat of a tipping point for Emily, who began to put money away so that she could leave Timothy. In the meantime, Timothy wrecked another one of Emily's vehicles. Just before Thanksgiving in November 2019, Timothy was in Ohio for a job. He was driving a car Emily's parents had given them. Timothy was drinking and hit a utility pole. He fled from the scene and was found later in his hotel room passed out on the bed. For some reason, he was not charged with an OWI, but he did have his license suspended in Ohio because he left the scene of an accident. Ex. 11. Emily said their relationship rapidly deteriorated after this.

Layered on top of Timothy's drinking was periodic domestic violence between Timothy and Emily. This started soon after the couple met when Emily began traveling with Timothy to his different job sites. Emily described a fight at the end of February 2017 while they were in Georgia and started arguing about Emily returning to Iowa for a visit with her son Vinson. The argument began in a Wal-Mart parking lot and continued on the walk to their apartment, during which Emily said they were assaulting one another. Once

back at the apartment, Emily said that she was trying to leave and Timothy was pushing her from behind. The stairs to the apartment were cement, and Emily recalled that Timothy pulled her halfway down the stairs by her hair. She had to kick him to get away. Emily sustained contusions on her face from this fight. Ex. 4. Timothy recalled that this fight occurred but denied having physically assaulted Emily.

In March 2017, while they were still in Georgia, Emily testified that Timothy was pulling onto a road from a fast food restaurant when he punched her in the head “out of nowhere.” Emily’s head hit the window, and Timothy kept hitting her. Emily was able to get out and call Timothy’s cousin for help. Timothy’s cousin arrived but was not able to get Timothy to exit the car. During this incident, Timothy became so enraged that he almost kicked out the windshield of the vehicle they were driving. Ex. 5. Emily’s ear was bruised from this fight. Ex. 3. Timothy admitted that he kicked the windshield of the vehicle but denied having hit Emily. He blamed his actions on an “excessive amount of alcohol.”

The physical fights stopped for a period of time after this, although Emily said they were replaced by verbal abuse. Emily described a time when OKF was just two or three weeks old, and she came down with a migraine that was so severe she had to go to the emergency room. After receiving some medication, Emily returned home and was trying to rest in a dark room. OKF was crying, and Timothy brought him in to Emily while he stayed in the living room drinking. At some point, Timothy went back into the bedroom, balled up his fist, and told Emily he was going to punch her in the face. Emily was able to get him to leave the bedroom because OKF was with her, and Timothy passed out in

the living room. Emily said fights like these were pretty typical and punctuated by Timothy saying terrible things to her like she deserved to be molested.

The toxicity between the parties culminated with a fight that spanned a two-day period in February 2020. Although their relationship was rocky at the time, Emily said that Timothy returned to Iowa on February 2, 2020, for Emily's grandfather's funeral the following day. Emily was drinking on February 2nd, explaining that she was on an "emotional roller coaster." Timothy said something that "set her off," and she told him to leave the house. Timothy did, but came back later at Emily's request. While Timothy was gone, he bought some alcohol and continued drinking once back at the house. When Emily woke up for the funeral the next morning, she saw that she had broken blood vessels on her cheeks and neck. Emily knew this meant that the fight between her and Timothy had gotten physical, but she couldn't remember exactly what happened because she had been drinking.

Emily made the difficult decision to skip her grandfather's funeral on February 3, stating that she didn't want to face questions from her family about what happened to her face and neck. Emily was depressed and started drinking with Timothy around 8:30 a.m. that day. They laid down for a nap together with OKF at noon. Emily woke up with OKF a few hours later still feeling sad. She decided to go into town to get alcohol and pizza. Emily left Timothy, who was awake by then, with OKF. When she returned home about thirty to forty-five minutes later, Timothy had fallen back asleep. OKF was still awake and unsupervised.

This made Emily agitated, but she began to drink again with Timothy. At around 7:00 p.m., Emily knows from her text messages that she texted Timothy to get out of the

house. She's not sure what led up to this text, but things quickly deteriorated from there. Timothy refused to leave, so Emily took the keys to his rental car and threw them out of the door. Timothy then began throwing things around in the house. At some point, he threatened to cut their cat's paw off and use it as a keychain. Emily remembers they started pushing one another after this.

Emily then walked into the kitchen, got a knife, and told Timothy to leave. Emily thinks she was standing three to four feet away from Timothy. He grabbed the knife from her, cutting his finger in the process, and broke the blade off. Emily got another knife but was still several feet away from Timothy. He wrestled her to the ground and got on top of her. Emily said that during this tussle, her knee popped. She found out later that she tore her ACL. Emily was pinned down on the floor by Timothy's knee, and he was punching her in the head. She was not able to breathe because Timothy's knee was on her neck. Emily testified that she thought Timothy was going to kill her.

During this fight, OKF ran out of the kitchen with the knife Timothy had wrestled away from Emily. Emily was able to extricate herself from Timothy by biting him. Once free, Emily got the knife away from OKF and started trying to clean herself up. When Emily saw Timothy head down the hallway of the house, she saw her opportunity to leave the house with OKF. Emily grabbed OKF and got into her car wearing just a t-shirt and underwear. She drove out of town and stopped on a gravel road to pull herself together. Emily put OKF in his car seat, found her glasses, and went back to the house to get her pants and wallet. When she got back to the house, Timothy was making food. He laughed at her for having taken a knife out. Emily was able to gather some of her things and left the house again.

Emily headed towards Carroll to spend the night at a hotel. While on her way, she was pulled over for not fully stopping at a stop sign. The officer approached her vehicle and shined his flashlight in. When he saw Emily's face, he immediately asked what had happened to her. Emily started crying and told the officer that her husband had beat her up. Pictures taken the night of the assault show multiple bruises on Emily's knees, arms, and face, along with a black eye, cuts, and scrapes. Ex. 22.

Timothy was arrested in the early morning hours of February 4, 2020, for domestic abuse assault. Following a trial on the charge, Timothy was found not guilty based upon his claim of self-defense. Emily explained that she was unprepared for Timothy's criminal trial, having only been informed that it was occurring from her attorney in this proceeding. According to Emily, the prosecutor did not speak to her prior to the hearing nor did a victim-witness advocate. When Emily arrived at the courthouse, she saw Timothy for the first time since the assault and suffered a panic attack. She was eventually able to get into the courthouse to testify but had trouble gathering her thoughts and articulating what had happened. Emily has since started weekly individual counseling sessions. Ex. 35.

After the criminal case against Timothy was dismissed, Emily filed a petition for relief from domestic abuse. A temporary protective order was issued, followed by a final consent protective order entered on April 13, 2020. In that order, the parties agreed that OKF would be placed in Emily's temporary custody with daily twenty-minute Facetime calls between OKF and Timothy. Emily filed a contempt application in the domestic case on July 21, 2020, alleging that Timothy texted her on May 25th and called her on June 21st in violation of the protective order. She filed a separate contempt application in the dissolution case, alleging that Timothy violated a June 8, 2020 temporary order requiring

him to pay \$1500 in temporary attorney fees. Emily requested that Timothy be sentenced to jail for these violations. Hearing on the contempt applications were consolidated with the dissolution trial, which was held by video conference on February 11, 2021.

Prior to the trial, the parties filed a pretrial stipulation pursuant to which they agreed OKF should be placed in Emily's physical care. They further agreed on the amount of their incomes, but disagreed on the amount of child support Timothy should pay. Their disagreement on child support stemmed from Emily's request that she provide health insurance for the minor child rather than Timothy. The couple additionally agreed to alternate claiming the child for available tax benefits and the division of certain debts. Property division was also not in dispute for the most part.

The issues left for the Court's resolution are therefore: (1) Emily's request for sole legal custody of OKF with supervised visitation for Timothy; (2) the amount of child support to be ordered and provision of health insurance for OKF; (3) division of a stimulus payment received by Timothy in the spring of 2020; (4) assignment of responsibility for Emily's medical bills from the February 2020 assault, storage fees for a trailer being awarded to Timothy, a tax debt from 2019, and money owed to the Ohio DOT for Timothy's accident; and (5) attorney fees.

ANALYSIS

I. Legal Custody, Physical Care, and Visitation

"When a district court dissolves a marriage involving a minor child, the court must determine who is to have legal custody of the child and who is to have physical care of the child." *In re Marriage of Hynick*, 727 N.W.2d 575, 579 (Iowa 2007). "The legislature and judiciary of this State have adopted a strong policy in favor of joint custody from which

courts should deviate only under the most compelling circumstances.” *In re Marriage of Winnike*, 497 N.W.2d 170, 173 (Iowa Ct. App. 1992). If either parent requests joint custody, as Timothy has done here, “the court must order joint custody unless it cites clear and convincing evidence, pursuant to the factors in Iowa Code section 598.41(3), that joint custody is unreasonable and not in the best interests of the children to the extent that the legal custodial relationship between the children and a parent should be severed.” *In re Marriage of Hamoda*, 2008 WL 3363834, at *1 (Iowa Ct. App. Aug. 13, 2008) (citing Iowa Code § 598.41(2)(b)). Among the factors for the Court to consider in determining the best custody arrangement are whether each parent would be a suitable custodian for the child, whether the safety of the child or other parent will be jeopardized by awarding joint custody, and whether a history of domestic abuse exists. Iowa Code § 598.41(3)(a), (i), (j).

Where there is a history of domestic abuse, “a rebuttable presumption against the awarding of joint custody exists.” *Id.* § 598.41(1)(b). “An unrebutted finding of a history of domestic abuse outweighs consideration of any other section 598.41(3) factor.” *Hamoda*, 2008 WL 3363834, at *2; *see also* Iowa Code § 598.41(2)(c). In determining whether a history of domestic abuse exists, the Court can consider “the issuance of a protective order, the response of a police officers to the scene of an alleged domestic abuse incident, the arrest of an individual in response to a report of alleged domestic abuse, or a conviction for domestic abuse assault.” *Hamoda*, 2008 WL 3363834, at *2; *see also* Iowa Code § 598.41(3)(j). “[D]omestic abuse is in every respect dramatically opposed to a child’s best interests.” *Hamoda*, 2008 WL 3363834, at *2.

There is clearly a history of domestic abuse in this case. Emily described several incidences spanning the course of her relationship with Timothy where she sustained injuries from Timothy's physical assaults. Her recollection of these events was credible and supported by pictures of her injuries. Although Timothy denied having assaulted Emily on these occasions, the Court finds Emily to be more credible based upon her demeanor and emotions when testifying. This is true even upon listening to the trial of the February 2020 domestic charge against Timothy. Emily's testimony in that proceeding was consistent with the testimony she gave in this case, although she was able to provide more detail here. Finally, the Court does not believe the abuse was mutual, as suggested by Timothy. *See In re Marriage of Davis*, 2017 WL 4570407, at *2 (Iowa Ct. App. Oct. 11, 2017) (noting evidence of mutual abuse can rebut the presumption of a history of domestic abuse by one of the parties). Other than his claim that Emily threatened him with a knife during the fight on February 3, 2020, Timothy did not testify about any other times when Emily assaulted him. While Emily was certainly a participant in some of the fights, the Court credits Emily's testimony that Timothy was generally the aggressor.

Based upon this factor alone, the Court could conclude that OKF should be placed in Emily's sole legal custody. *See Hamoda*, 2008 WL 3363834, at *3. But other factors support that result as well, particularly Timothy's ongoing substance abuse and the danger in which that places OKF. While Timothy could not recall the exact number of OWIs he has received over the course of his life, he believed it was "not more than seven." Emily provided proof of at least three, two of which were in 2019. She also testified about

several other times when Timothy was involved in an accident as a result of his drinking but escaped OWI charges.

Timothy acknowledged that he has problems with alcohol. But when asked whether he would participate in substance abuse treatment, Timothy was noncommittal. This is in the face of Timothy's continued drinking, as evidenced in text messages to Emily after the February 2020 fight. In one of those text message exchanges, dated February 7, 2020, at 1:43 p.m., Timothy tells Emily: "I may have gone too far . . . Today. I need to clean myself up and get on the road. . . . I've been driving drunk a lot. I'm going to wait and leave later." In another sent the following day, Timothy says, "I'm basically trying to kill myself." Ex. 41. And in a video of a Facetime call with OKF from May 26, 2020, Timothy is slurring his words and falling asleep while trying to talk with OKF. Ex. 34. Emily testified that she believed Timothy was drunk during that call, which she said was not a one-time occurrence.

Though Timothy said that Emily also drank during their relationship, it was not to the same extent as him. In addition, Emily testified that since ending her relationship with Timothy, she drinks only occasionally and attends AA meetings by video whenever she can. Timothy has not made the same changes, nor did he profess any real interest in doing so despite the multiple adverse consequences that have resulted from his alcohol use. A parent's ongoing and untreated substance abuse problems pose a serious risk to a young child's safety and can require not only sole legal custody but also supervised visitation. *In re Marriage of Eischeid*, 2003 WL 1969054, at *3 (Iowa Ct. App. Apr. 30, 2003); *In re Marriage of Grunder*, 2014 WL 2431464, at *2-3 (Iowa Ct. App. May 29, 2014).

Turning then to the issue of visitation, Emily has requested that Timothy's visitation with OKF not commence until he completes a substance abuse evaluation and participates in any recommended treatment, following which he could start professionally supervised visits with OKF in Iowa for a few hours at a time. In contrast, Timothy has requested unsupervised visitation with OKF the one weekend every month from Thursday at 5:00 p.m. until Sunday at 5:00 p.m. plus six uninterrupted weeks during the summer. Timothy proposed exercising his weekend visitation with OKF in Iowa, but wanted to have the summer visitation at his home in Oklahoma.

Pursuant to Iowa Code section 598.41(1)(a), a court should order "liberal visitation rights where appropriate, which will assure the child the opportunity for the maximum continuing physical and emotional contact with both parents after the parents have separated or dissolved the marriage." Consistent with the above, our courts have held that "[i]n general, liberal visitation is considered to be in a child's best interests." *Grunder*, 2014 WL 2431464, at *3. "Conditions should be placed on a parent's visitation rights 'only when visitation without the placement of conditions is likely to result in direct physical harm or significant emotional harm to the child, other children, or a parent.'" *Id.* (citation omitted). Any conditions that are imposed upon a parent's visitation must be in the child's best interests. *Id.*

The Court agrees with Emily that conditions should be placed on Timothy's visitation with OKF as a result of Timothy's untreated alcoholism, which has resulted in multiple criminal convictions and serious traffic accidents. Given the persistence with which Timothy drinks and drives, and his refusal to seek treatment, it is only a matter of

time before he hurts himself or another person. The Court must do what it can to prevent that person from being OKF.

To that end, the Court adopts Emily's suggestion that Timothy should not have any visitation with OKF until he completes a substance abuse evaluation and participates in any recommended treatment. Upon completion of treatment, Timothy shall have visitation with OKF on the first Saturday of each month from 9:00 a.m. until 12:00 p.m. These visits shall be supervised by a person or agency approved by Emily. The cost of supervision shall be paid in advance by Timothy. After six months of supervised visitation, Timothy shall progress to unsupervised visitation on the first weekend of each month from Friday at 5:00 p.m. until Sunday at 5:00 p.m. These visits shall take place in Iowa. Timothy is prohibited from drinking alcohol during the visits. He is also required to purchase a Soberlink device and be subject to testing during his parenting time with the child. A positive test for alcohol during Timothy's parenting time with the child shall result in immediate suspension of Timothy's unsupervised visitation, which shall be subject to reinstatement only upon application to the Court.

Regardless of whether Timothy is able to achieve sobriety, the Court denies Timothy's request for extended visitation with OKF during the summer months in Oklahoma. Timothy testified that when he is in Oklahoma, he lives with his disabled brother Brian and an aunt who cares for him. Brian was convicted of sexually abusing a minor child in 2010 and is a registered sex offender. Despite the fact that Brian is a registered sex offender, Timothy testified that he had no concerns with him being around OKF. The Court does not share the same lack of concern. See, e.g., Iowa Code § 598.41(3)(k) (stating a factor in determining custody is whether a parent has allowed a

person “custody or control of, or unsupervised access to a child after knowing the person is required to register or is on the sex offender registry as a sex offender”).

The Court has tried to provide for visitation that will protect the parties’ child while at the same time allowing for the possibility that Timothy will become sober. The Court has not provided for any additional visitation beyond what is set forth above because the evidence makes it impossible to know when Timothy’s substance abuse will no longer pose a risk to OKF. Under the circumstances present here, the Court believes it is appropriate to place the burden on Timothy to show a change in circumstances before his visitation is expanded or restrictions lifted. *See Eischeid*, 2003 WL 1969054, at *2 (approving of an indefinite period of supervised visitation). That being said, the parties are free to mutually agree to expanded or unrestricted visitation between Timothy and OKF at any time they deem appropriate. Of course, until the protective order is lifted, any such agreements would need to be made through the parties’ attorneys.

II. Child and Medical Support

In ordering child support, the Court must “determine the amount of support specified by the guidelines.” Iowa Ct. R. 9.4. The first step in doing so is determining the net monthly income of the custodial and noncustodial parent. *In re Marriage of Cossel*, 487 N.W.2d 679, 681 (Iowa Ct. App. 1992). Here, that first step has been made easy by the parties’ agreement as to their gross annual incomes. The parties have stipulated that Timothy earns \$83,018.87 gross per year, while Emily grosses \$24,960 per year. Pretrial Stip. They have also agreed to alternate claiming the minor child for all available tax benefits. Their point of contention comes from their disagreement as to who should provide medical insurance for OKF.

Timothy has medical insurance available for OKF through his union at no additional cost to him beyond his monthly union dues, which will be factored into the child support calculation. While this would normally support an order requiring Timothy to provide the insurance for OKF, the Court agrees with Emily that is not appropriate here. Timothy initially refused to give Emily's OKF's insurance card, which resulted in Emily having to file a motion with the Court. Emily also testified to problems she experienced using Timothy's health reimbursement allowance (HRA). This account covers any uncovered medical expenses up to \$4000 per year. The claims have to first be paid by one of the parties and then submitted to the HRA for reimbursement. Since the plan is in Timothy's name, he receives the reimbursement. Emily testified Timothy had kept the reimbursement on past occasions. Timothy acknowledged Emily's concerns but said they could be addressed by having the medical providers bill him directly, following which he would seek reimbursement from his HRA. The Court finds the simpler solution is to put Emily in charge of providing medical insurance for OKF, which costs her \$80 per month through her employer. Timothy can certainly keep OKF on his insurance plan to provide secondary coverage.

In light of the foregoing, the Court finds that Timothy's monthly child support obligation should be set at \$922.36 per month. This amount has been calculated according to the child support guidelines filed by Emily on February 23, 2021, which provide for the alternating tax scenario, Timothy's union dues, and Emily's provision of medical insurance for OKF.

III. Property and Debt Division

The provisions of law governing property division in a dissolution are well-established:

Iowa is an equitable distribution state. This “means that courts divide the property of the parties at the time of divorce, except any property excluded from the divisible estate as separate property, in an equitable manner in light of the particular circumstances of the parties.” All property of the marriage that exists at the time of the divorce, other than gifts and inheritances to one spouse, is divisible property.

In re Marriage of Sullins, 715 N.W.2d 242, 247 (Iowa 2006) (internal citations omitted). Allocation of marital debts inheres in the property division. *Id.* at 251. “Debts of the parties normally becomes debts of the marriage, for which either party may be required to assume the responsibility to pay.” *Id.*

The only disputed item of personal property was a stimulus payment Timothy received in the spring of 2020 for \$2900. Timothy said that he did not share this money with Emily because she took \$2000 from his Paypal account without his authorization. Emily denied this, testifying that Timothy had given her permission to withdraw the money. She also pointed out that he was not paying any child support at the time. The Court finds it is equitable to grant Emily’s request to share this money and accordingly orders Timothy to pay her \$1700 from the spring 2020 stimulus payment within 30 days from the date of this order. Timothy shall also cooperate in signing the stimulus check Emily received in the winter of 2020.

This leaves the question of how certain debts should be divided between the parties. Emily first requests that Timothy be responsible for the uncovered medical bills stemming from the knee injury she suffered as a result of the February 2020 assault. Most of the charges were covered by Timothy’s insurance. The ones that were not totaled \$370.46. Ex. 40. Emily should have received reimbursement from Timothy’s HRA for

those uncovered medical expenses. The Court accordingly finds it equitable for Timothy to reimburse Emily \$370.46 within 30 days from the date of this order.

Emily next requests that Timothy be ordered to pay storage fees for a trailer they have agreed he should be awarded. The trailer has been stored at Emily's parents' place of business since May 2020. Although there are invoices for her parents' storage of the trailer, there is no indication Emily actually paid them or that her parents expected payment. There is also no indication that Emily's parents were out of pocket for the fees they charged to Timothy to store the trailer on their property. The Court accordingly rejects Emily's request that Timothy pay the amount set forth in her Exhibit 25. The Court adopts Timothy's request to have 30 days to transfer the title to the trailer into his name and 60 days within which to pick it up from Emily's parents' place of business.

This brings the Court to a delinquent tax debt from 2019, which Emily asserts Timothy should be responsible for. Ex. 7. Emily contends this debt resulted from Timothy's income; Timothy did not disagree. The Court accordingly orders Timothy to either pay the 2019 tax debt of \$1643.95 or arrange a payment plan with the Iowa Department of Revenue within 30 days from the date of this order. *See Sullins*, 715 N.W.2d at 252 (requiring husband to be responsible for income tax liability for years when he failed to pay quarterly self-employment taxes).

Emily finally requests that Timothy be responsible for the money owed to the Ohio DOT for Timothy's accident on January 3, 2018, when he hit the guard rail while driving Emily's vehicle. The amount now due is \$14,332.72. Ex. 9, 10. The Court agrees that Timothy should be responsible for this debt due to his actions in bringing it about.

IV. Contempt Application

Having resolved the disputed issues in the parties' dissolution proceeding, the Court turns next to Emily's contempt application in this proceeding. A separate order regarding the contempt application in the domestic proceeding will issue in that case.

"A party alleging contempt has the burden to prove the contemner had a duty to obey a court order and willfully failed to perform that duty." *Ary v. Iowa Dist. Ct.*, 735 N.W.2d 621, 624 (Iowa 2007). If the party alleging contempt proves a violation of a court order, "the burden shifts to the alleged contemner to produce evidence suggesting the violation was not willful." *Id.* The person alleging contempt nevertheless retains the burden of proof to establish willfulness beyond a reasonable doubt because of the quasi-criminal nature of the proceeding. *Id.* Willful violation of a court order requires evidence of conduct "that is intentional and deliberate with a bad or evil purpose, or wanton and in disregard of the rights of others, or contrary to a known duty, or unauthorized, coupled with an unconcern whether the contemner had the right or not." *Id.* (citation omitted).

Emily's contempt application in the dissolution proceeding alleges that Timothy failed to timely pay her temporary attorney fee award of \$1500. She acknowledged, however, that since the filing of her application the fees have been paid in full. While the Court does not approve of Timothy's untimely payment of these fees, it exercises its discretion under Iowa Code section 598.23(1) and declines to hold Timothy in contempt on this count. See *In re Marriage of Swan*, 526 N.W.2d 320, 327 (Iowa 1995) (noting a trial court is not required to hold a party in contempt even though the elements of contempt may exist).

V. Attorney Fees

In the pretrial stipulation filed with the Court, Emily asked for an award of \$6500 in attorney fees. “Whether attorney fees should be awarded depends on the respective abilities of the parties to pay.” *Sullins*, 715 N.W.2d at 255. Timothy earns close to four times as much as Emily. That being said, he has been ordered to take on several debts incurred during the marriage and make other payments to Emily. He has also already paid \$1500 in temporary attorney fees and has fees of his own to pay. With all that in mind, the Court finds that an award of \$2500 in attorney fees to Emily is equitable. Timothy is directed to make that payment within 30 days from the date of this decree.

CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED that the marriage of Emily Jean Fishburn and Timothy Joel Fishburn is hereby dissolved.

IT IS FURTHER ORDERED as follows:

1. LEGAL CUSTODY and PHYSICAL CARE. The parties’ minor child, OKJ, shall be placed in Emily’s sole legal custody and physical care. Pursuant to Iowa Code section 598.41(1)(e), Timothy shall have legal access to information concerning the child, including but not limited to medical, educational, and law enforcement records. The Court additionally orders that Timothy shall cooperate with Emily to sign any necessary documents to obtain a passport for the minor child.
2. VISITATION. Timothy shall have visitation with the minor child as follows:
 - a. Timothy shall not have any visitation with the child until he completes a substance abuse evaluation and participates in any recommended treatment. Timothy shall provide proof of the evaluation and completion of treatment to Emily. During this period of time, Timothy may have Facetime calls with the child on Saturdays and Sundays at 10:00 a.m. for twenty minutes.

- b. Upon completion of treatment, Timothy shall have visitation with OKF on the first Saturday of each month from 9:00 a.m. until 12:00 p.m. These visits shall be supervised by a person or agency approved by Emily. The cost of supervision shall be paid in advance by Timothy.
- c. After six months of supervised visitation, Timothy shall progress to unsupervised visitation on the first weekend of each month from Friday at 5:00 p.m. until Sunday at 5:00 p.m. These visits shall take place in Iowa at a location not less than 30 miles away from Emily's residence.
- d. Timothy is prohibited from drinking alcohol 24 hours before his visits and during the visits themselves.
- e. Timothy shall purchase a Soberlink device and be subject to testing during his parenting time with his child. A positive test for alcohol during Timothy's parenting time with the child shall result in immediate suspension of Timothy's unsupervised visitation, which shall be subject to reinstatement only upon application to the Court.
- f. Due to Timothy's driving history, Emily or a designated third party on her behalf shall be responsible for transporting the child to and from visits with Timothy.

3. CHILD SUPPORT. Timothy shall pay Emily \$922.36 per month in child support commencing the 1st day of April 2021, and continuing to come due on the 1st day of every month thereafter until further order of the Court. This amount has been set according to the child support guidelines filed by Emily on February 23, 2021.

- a. These payments shall be made through the clerk of the above-named district court or the Collection Services Center, P.O. Box 9125, Des Moines, Iowa 50306-9125. Support shall continue for each child until the child reaches age 19, reaches age 18 and graduates from high school, marries, dies, or becomes emancipated, whichever occurs first. All child support is subject to immediate mandatory withholding pursuant to Iowa Code section 252D.8.
- b. Each party shall file with the clerk of court or CSRU, as appropriate, upon entry of this Decree, and update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of the party's employer. The information filed will be disclosed and used pursuant to Iowa Code section 598.22B. Each party shall file the information with the clerk of court, or, if support payments are

to be directed to the collection services center as provided in section 252B.14(2) and section 252B.16, with CSRU.

- c. In any subsequent child support action the CSRU initiates or between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the unit or the court shall deem due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the clerk or unit pursuant to the preceding paragraph.

4. MEDICAL SUPPORT. Emily shall be responsible for providing health insurance for the minor child so long as it is available to her at a reasonable cost.

- a. Pursuant to rule 9.12(5), Emily shall pay the first \$250 per year per child of uncovered medical expenses. After that amount is met, Emily shall pay 30% and Timothy shall pay 70% of uncovered medical expenses. Uncovered medical expenses means all medical expenses for the children not paid by insurance. Medical expenses shall include, but not be limited to, costs for reasonably necessary medical, orthodontia, dental treatment, physical therapy, eye care, including eye glasses or contact lenses, mental health treatment, substance abuse treatment, prescription drugs, and any other uncovered medical expense.

5. STATE AND FEDERAL TAX FILINGS. Emily shall be entitled to claim the minor child for all available federal and state tax benefits in each even-numbered tax year, and Timothy shall be entitled to claim the minor child for all available federal and state tax benefits in each odd-numbered tax year so long as he is current on his child support obligation by December 31st of that tax year.

6. POST-SECONDARY EDUCATION. The Court retains jurisdiction to determine the manner in which post-secondary education expenses should be paid.

7. PROPERTY DIVISION.

- a. Real Property. Emily shall be awarded the home located at 421 S. 4th Ave., Templeton, Carroll County, Iowa, which is in her name alone. She shall be solely responsible for any indebtedness secured by the property, as well as all real estate taxes, homeowners' insurance premiums, utilities, and all other expenses related to this property, and she shall hold harmless and

indemnify Timothy against said debt. If necessary, Timothy shall cooperate with the execution of a quit claim deed.

b. Personal Property. The following divisions of personal property shall be made:

- i. *Household Contents.* Each of the parties shall be awarded the household contents currently in his or her possession.
- ii. *Motor Vehicles.* Each of the parties shall be awarded the vehicles currently in their possession, along with any debt owed thereon, with the exception of the 2017 travel trailer. The trailer shall be awarded to Timothy, along with any debt owed thereon. Timothy shall transfer the title to the trailer into his own name within 30 days from the date of this decree and shall retrieve the trailer from Emily's parents' place of business within 60 days from the date of this decree.
- iii. *Bank Accounts.* Each party shall be awarded any bank accounts titled in his or her own name.
- iv. *Retirement Accounts.* Each party shall be awarded any retirement accounts titled in his or her own name.
- v. *Life Insurance Policies.* Each party shall be awarded any life insurance policy titled in his or her own name.
- vi. *Stimulus Payments.* Within 30 days from the date of this decree, Timothy shall pay Emily \$1700 from the spring 2020 stimulus payment he received and sign the stimulus check Emily received in the winter of 2020.

c. Debt Division.

- i. Emily shall be responsible for any debt incurred in her own name alone, including her Cornerstone student loan and Capital One credit card, and she shall indemnify and hold Timothy harmless therefrom.
- ii. Timothy shall be responsible for any debt incurred in his name alone, including his NelNet student loans, two Chase credit cards, PayPal account, and Amazon card, and he shall indemnify and hold Emily harmless therefrom.
- iii. Timothy shall also be responsible for the following debts:
 - (1) 2019 Iowa Department of Revenue: \$1643.95;

- (a) Within 30 days from the date of this decree, Timothy shall either pay this debt in full or enter into a payment plan with the Iowa Department of Revenue.
- (2) Ohio DOT/Ohio Highway Claims: \$14,332.72
- iv. Timothy shall pay Emily \$370.46 within 30 days from the date of this decree to reimburse her for the uncovered medical expenses she incurred from the February 2020 assault.

8. HOLD HARMLESS. The parties shall fully indemnify and hold the other party harmless for any debt assigned to them by virtue of this decree, which indemnity shall include attorney fees and court costs. The parties are informed that an assignment of responsibility for a debt by the Court does not affect any joint and several liability that the parties may have by contract with any creditor.

9. SPOUSAL SUPPORT. Neither party shall pay spousal support to the other.

10. TITLES. The parties shall execute the necessary documents if any required to implement the intent of this decree, including but not limited to quit claim deeds or transfer of vehicle titles.

IT IS FURTHER ORDERED that Emily shall be restored to her maiden name of Emily Jean Bruhn.

IT IS FURTHER ORDERED that Emily's contempt application is **DISMISSED**.

IT IS FURTHER ORDERED that Timothy shall pay \$2500 in attorney fees to Emily within 30 days from the date of this order. Court costs are assessed equally against the parties.

CLERK TO FURNISH COPIES TO:
Counsel of Record
Self-Represented Parties
Court Administration