

**ARIZONA COURT OF APPEALS**  
**DIVISION ONE**

In Re the Matter of:

KATHLEEN MARIE BALL,

Petitioner/ Appellee,

v.

SHAWN ALLEN BALL,

Respondent/ Appellant.

Court of Appeals  
Division One  
No. 1 CA-CV-19-0787 FC

Maricopa County  
Superior Court  
No. FC2017-096436

**RESPONDENT/APPELLANT'S COMBINED OPENING BRIEF  
AND APPENDIX**

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## INTRODUCTION

This appeal is about whether Appellant (“Father”) can be barred from taking his children to worship at The Church of Jesus Christ of Latter-day Saints or sharing with them his beliefs, when the parties’ post-divorce parenting plan expressly: (1) permits each parent to take the children to a church “of [the parent’s] own choice” and (2) allows, but does not require, that the children “may be instructed in the Christian faith.”

Turning the plain meaning of these provisions directly on their head, the trial court erroneously concluded that: (a) Father was *not* permitted to take the children to the “church of [his] own choice,” and (b) the children were *required* – not just allowed – to be instructed in the “Christian” faith.

Having made a critical wrong turn right out of the gate, the trial court then bounded off into the legal wilderness – and eventually over a constitutional cliff – when it undertook to determine “what is or is not within the definition of Christianity.”

What followed was an evidentiary hearing in which Mother’s “expert” – a youth pastor from her own/preferred church – testified about “what is salvation”; whether the Trinity is more like “water” or “dinner”; and whether the Bible is the only word of God. Meanwhile, Father testified

that: his Church “bears [Christ’s] name and always emphasizes we should feast on the words of Christ”; “I am not only a Christian, but more of a practicing follower of Jesus Christ than ever before in my entire life”; and that “Jesus Christ is the center point of my faith.”

On the basis of this disputed, spiritual evidence, the trial court purported to settle—once and for all—that The Church of Jesus Christ of Latter-day Saints (so-called “Mormonism”) “does not fall within the confines of the Christian faith.” Combining this theological conclusion with its textually unsupported determination that “the children *shall only* be instructed in the Christian faith,” the trial court found Father in violation of the parenting plan and ordered him to pay \$3,000 in Mother’s attorneys’ fees.

The impermissible effect of the trial court’s decision is to enjoin Father from taking his children to his church, muzzle him from exposing them to his religious beliefs, and preclude him from exercising his parental right to participate in their religious upbringing, consistent with his moral and religious belief system.

While ecclesiastical questions about what is encompassed within “Christianity” have been, and no doubt will continue to be, the subject of theological debate, both the First Amendment and the Arizona Constitution

prohibit the trial court—or any other arm of the civil government—from appointing itself as a one-man Council of Nicaea/arbiter of religious doctrine. Moreover, courts inherently lack competence to enforce a bare agreement to “instruct[] in [a particular] faith” without becoming unconstitutionally entangled in religious questions and infringing on religious liberty by favoring one parent’s religious beliefs over another’s.

The trial court could have avoided this unconstitutional entanglement in the parties’ religious dispute simply by applying the unambiguous “church-of-choice” and “*may*-be-instructed” terms of the parenting plan, as written. This would have protected the right of both Father and Mother to take their children, when in their care, to the church or their own choice. And it would have further ensured that both Mother and Father “may” continue to instruct the children about their respective views of Christianity.

This Court should correct the errors below by reversing the trial court’s order and applying the parenting plan’s plain language, without trying to resolve what it means to be a Christian church or to instruct a child in the Christian faith.

## STATEMENT OF FACTS AND CASE\*

**The Divorce and Parenting Plan.** Upon dissolution of their marriage in 2018, the parties filed a Parenting Plan to address legal decision making and care for their teenage daughter and son. Under the original plan, Father had parenting time each week from Sunday afternoon until Friday morning, with Mother having parenting time Friday through Sunday. As a practical result, Father almost never had the children during the time of church services. Regarding the children's religious education, the parents checked boxes in the Parenting Plan, agreeing that (1) "[e]ach parent may take the minor children to a church or place of worship of his or her choice" and (2) "the minor children may be instructed in the Christian faith."

<b>H. RELIGIOUS EDUCATION ARRANGEMENTS: (Choose ONE)</b>	
<input checked="" type="checkbox"/>	Each parent may take the minor children to a church or place of worship of his or her choice during the time that the minor children is/are in his or her care.
<input checked="" type="checkbox"/>	Both parents agree that the minor children may be instructed in the <u>Christian</u> faith.
<input type="checkbox"/>	Both parents agree that religious arrangements are not applicable to this plan.

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\* Selected record items cited are included in the Appendix attached to the end of this brief, cited by page numbers (e.g., APP001), which also match the PDF page numbers and function as clickable links. Other record items are cited with "IR-" followed by the record number.

Parenting Plan for Joint Legal Decision Making 5, FC2017-096436, Mar. 12, 2018 [IR-14 Parenting Plan ([APP038](#)).] Notably, the Parenting Plan does not define or specify the contours of the term “Christian faith.” For example, the provision does not specify “the Evangelical version of the Christian faith,” or “the Lutheran version of the Christian faith,” or “the Protestant version of the Christian faith,” or “the Catholic version of the Christian faith.” Nor does the Parenting Plan prohibit the children from being instructed in other faiths.

**Father’s Conversion to the Church of Jesus Christ.** Approximately one year after the parties’ divorce, Father joined The Church of Jesus Christ of Latter-day Saints, and the children on occasion accompanied him there when Mother would swap her Sunday time. But after Mother learned about these visits to what she called the “Mormon” church,<sup>1</sup> she sued for violation of the Parenting Plan, claiming “Mormons” are not “Christians.” [IR-32 Petitioner/Mother’s Separate Prehearing Statement at 12-14.]

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<sup>1</sup> The Church of Jesus Christ of Latter-day Saints considers “Mormonism” to be an inaccurate descriptor and prefers it not be used. <https://perma.cc/DKG6-PWXT>. “When a shortened reference is needed, the terms ‘the Church’ or ‘the Church of Jesus Christ’ are encouraged.” *Id.*

**Mother's Petition.** The trial court first addressed Mother's petition at a July hearing. [07/10/19 Tr. ([APP071](#)).] There, the trial court acknowledged it was not "qualified" to "get into what is the definition of Christianity." [*Id.* at 29:4-9 ([APP077](#)); *see also id.* at 35:18-24 ([APP078](#)).] ("I'm certainly not qualified to answer that question."). The court further observed that the Parenting Plan states only that the children "may" be instructed in the Christian faith, and that "unless [Mother was] arguing that 'may' really should mean 'shall,'" the parties were "sort of stuck with the words that were included." [*Id.* at 29:18-24 ([APP077](#)).]. Ultimately, however, the court concluded that it had not "scheduled to really address this issue today" and instead set a time in September for what the court anticipated would be "a battle of the religious experts." [*Id.* at 43:11-20, 44:10-17, 54:2-5 ([APP079](#), [APP080](#), [APP081](#)).]

**The Issue: What is Christianity?** At the September hearing, the court announced that the hearing's purpose was to determine "what is or is not within the definition of Christianity." [09/16/19 Tr. at 5:20-24 ([APP088](#)).] Mother was represented by counsel; Father was unable to afford counsel and appeared *pro se*. [*Id.* at 4 ([APP087](#)).]

**Mother's Testimony.** Mother testified that the parties checked “both boxes” on the Parenting Plan related to religious upbringing because – at the time – they “didn’t really care which church. . . . as long as it was a Christian faith.” [*Id.* at 18:20-24 ([APP101](#)).] After learning that the children “were attending the Mormon church,”<sup>2</sup> she objected because she claimed that “Mormonism was not anywhere close to what we had intended.” [*Id.* at 21:9-16 ([APP102](#)).] She alleged that both children wanted “to attend Grace” (her church) and that it was confusing to them “to be trained in both religions.” [*Id.* at 23:13-16 ([APP104](#)).]

**Testimony of Mother's Expert.** Mother called Josh Girgenti, the Student Ministries Director at her church, to provide purportedly expert testimony on the issue. Mr. Girgenti holds a Master of Arts in Ministry and claimed to know about “both the Mormon faith and the Protestant faith” from personal experience because his father was a Protestant and his mother was a “practicing Mormon ... up until about two years ago.” [*Id.* at 7:21-8:7 ([APP090](#)).] Mr. Girgenti argued that:

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<sup>2</sup> At no time in the hearing did Mother or her “expert” ever refer to The Church of Jesus Christ of Latter-day Saints by its correct name.



- “Christianity” and “the gospel of Mormonism” differ on “what is salvation.” [*Id.* at 9:10-15 ([APP092](#)).] For “Christians,” he testified, “[t]he only way” to salvation is “through Jesus.” [*Id.* at 10:6-10 ([APP093](#)).] Beyond believing in Jesus, he said, “Mormons” also require “obedience to the LDS teachings” [*Id.* at 10:13-18 ([APP093](#)).]
- “Christianity” and “Mormonism” have completely different messages regarding the Trinity. [*Id.* at 11:1-12:15 ([APP094](#)).] “Christians,” according to Mr. Girgenti, recognize the Trinity as “three separate persons,” but one entity. [*Id.* at 12:13-16 ([APP095](#)).] He analogized to water: “a solid, a liquid, and a gas” — “[t]hree different states but the same thing.” [*Id.* at 12:16-17 ([APP095](#)).] In contrast, “Mormons,” according to Mr. Girgenti, recognize the Trinity as “three separate entities” like “a dinner: a chicken, a vegetable, and a drink” — “[t]hree separate things.” [*Id.* at 12:12-13, 18-20 ([APP095](#)).]
- While “Christians” and “Mormons” both use the Bible, “Mormons” also have additional scripture in the Book of Mormon, Doctrine and Covenants, and Pearl of Great Price. [*Id.* at 14:3-8, 13:9-14 ([APP097](#), [APP096](#)).]
- “[T]he founder of Mormonism,” according to Mr. Girgenti, was Joseph Smith, while the “founder of Christianity” was Jesus Christ. [*Id.* at 14:13-16 ([APP097](#)).]

Noting the “many different sects of Christianity” the court ultimately inquired of Mr. Girgenti what “sort of extrinsic evidence” exists that “delineates what is Christianity.” [*Id.* at 15:10-16:5 ([APP098](#)).] Mr. Girgenti then responded that “[t]he word Christian ... interprets as Christ follower” and that “anybody who believes in Jesus, a personal relationship with him,

follows him, obeys his teaching, and holds fast to what his word says, would essentially be considered a Christ follower.” [*Id.* at 16:1-13 ([APP099](#)).]

**Father’s Testimony.** Father testified as follows regarding his Christian faith as a member of the Church of Jesus Christ:

- “I’m professing to be of the Christian faith in that Jesus Christ is the center point of my faith.” [*Id.* at 35:8-9 ([APP105](#)).]
- “I am not only a Christian, but more of a practicing follower of Jesus Christ than ever before in my entire life.” [*Id.* at 35:9-11 ([APP105](#)).]
- “My church bears [H]is name and always emphasizes we should feast on the words of Christ.” [*Id.* at 35:11-13 ([APP105](#)).]
- “I love God with all my heart, mind, and might. I love my [S]avior who is Jesus Christ. I have not drifted from worshipping my Creator through Jesus Christ. And I plan to teach my children all that it means by taking them to church and discussing the gospel inside my home.” [*Id.* at 35:24-36:3 ([APP105-06](#)).]

**The Order.** The trial court took the matter under advisement, [*id.* at 44 ([APP107](#)).], and issued its Order a few weeks later in Mother’s favor. [IR-42 Min. Entry, Oct. 4, 2019 ([APP034](#)).] The Order observed that “both parties agreed that each parent could take the Children to a church or place of worship of their choice” and that “the Children would be instructed in the Christian faith.” [*Id.* at 1 ([APP034](#)).] The court noted that it had “heard from a religious expert on the differences between “Christianity” and

“Mormonism,” but then stated—despite Father’s own testimony of his Christian faith—that “Father provided no evidence to the Court on this issue.” [*Id.* at 2 ([APP035](#))] The court then concluded that “Mormonism is a separate and distinct religion from Christianity with substantially different teachings.” [*Id.* ([APP035](#))] Accordingly, it held that “Mormonism does not fall within the confines of Christian faith” and that “instructing the children in [Mormonism]” thus “violates the Parenting Plan.” [*Id.* ([APP035](#))] The court then ordered that “the Children shall only be instructed in the Christian faith, which does not include Mormonism.” [*Id.* ([APP035](#))] The court also order Father to pay \$3000 toward Mother’s attorneys’ fees for violating the terms of the Parenting Plan. [*Id.* at 3 ([APP036](#))]

**The Appeal.** Father filed a notice of appeal on November 1, 2019 [IR-45]. This Court has jurisdiction under [A.R.S. § 12-2101\(A\)\(1\)](#).

**The February 2020 Modification of Parenting Time.** Following Father’s notice of appeal, on February 4, 2020, the Court signed the parties’ Stipulated Order Re: Modification of Parenting Time, which modified the Parenting Plan to create “regular access, equal parenting time on a week on/week off basis.” [Stipulated Order at 5 ([APP047](#))] Under the revised Parenting Plan, Father now has regular weekend time with the children. In

light of this modification, the Court's October 4, 2019 Order, [IR-42 (APP034)], enjoining Father from taking the children to his church, is now regularly and irreparably interfering with: his ability to participate in the religious upbringing of his children; his ability to spend time with his children; and with his own religious exercise. A.R.S. § 1-602(A)(3)-(4).

Father thus asks this Court to reverse the trial court's Order and apply the plain terms of the Parenting Plan to uphold his right to take his children to church and to share with them his religious beliefs.<sup>3</sup>

### **STATEMENT OF THE ISSUES**

1. Whether the trial court erred in concluding that the Parenting Plan bars Father from taking the children to The Church of Jesus Christ of Latter-day Saints or talking to them about his faith, when the Parenting Plan states that each parent may take the children to the church of the parent's choice, and also states that the children "may" be instructed in the Christian faith.

2. Whether the trial court erred by entangling itself in inherently religious disputes regarding:

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<sup>3</sup> On February 25, 2020, Father filed a motion in the trial court, seeking a stay of the Order pending the outcome of this appeal. [APP056.]

- a. Whether The Church of Jesus Christ of Latter-day Saints is within the Christian faith; and
  - b. What it means to “be instructed in the Christian faith.”
3. Whether the trial court erred in ordering Father to pay Mother’s attorneys’ fees.

### STANDARD OF REVIEW

The interpretation of a written parenting plan is reviewed *de novo*. *Jordan v. Rea*, 221 Ariz. 581, 588, ¶ 15 (App. 2009). Issues involving constitutional claims are also questions of law subject to *de novo* review. *Ramirez v. Health Partners of S. Ariz.*, 193 Ariz. 325, 327-28, ¶ 6 (App. 1998).

### ARGUMENT SUMMARY

The Parenting Plan is unambiguous. The parties agreed that whichever parent has care of the children at a particular time can take the children to the church of that parent’s choice. This “church-of-choice” provision alone is dispositive. When Mother has care of the children, she takes them to her church; when Father has care, he takes them to his. That is what the parties agreed to and have consistently done post-divorce.

Although the Court need not reach the issue, the “may-be-instructed” provision is not to the contrary. There, the parties agreed only that the

children “*may* be instructed in the Christian faith,” nothing more. Because the provision says “*may*,” not “*shall*,” it is permissive, not mandatory, and has no prohibitory effect, except to prevent either parent from *objecting* to Christian instruction – which is not an issue here.

The Parenting Plan’s broader context further supports this conclusion. Analogous provisions in the Parenting Plan, such as one governing arrangements for the children’s secular education, provide that the parents “*will*” make major decisions together. This shows that the parties were, or should have been, aware that the use of “*may*” was intended to mean something different, and thus the parties cannot complain about being bound by the language they adopted.

Other canons of contract interpretation also reinforce the Parenting Plan’s plain meaning, including the rule that, where two provisions address the same issue, the more specific provision trumps the more general one. Here, the parties’ church-of-choice provision speaks specifically to the question at issue in Mother’s petition – namely, where may each parent take the children to church. That, more specific provision thus governs the more general term providing that the children “*may* be instructed” in the Christian faith. Additionally, reading the latter provision to override the

former would violate another basic law of contract interpretation by rendering the former provision entirely superfluous. The Parenting Plan instead must be read in harmony to give effect to each term agreed to by the parties.

Because the trial court ignored the church-of-choice provision and misread the may-be-instructed provision, it felt compelled to resolve the parties' dispute over whether Father's church—The Church of Jesus Christ of Latter-day Saints—is a Christian church. But the First Amendment's Religion Clauses and Arizona constitutional and statutory provisions preclude the government, including courts, from becoming entangled in religious disputes of this nature.

Moreover, reading the may-be-instructed provision to say that the children *shall* be instructed in the Christian faith rendered the provision unenforceable. What it means to “be instructed” in a particular faith is itself a religious question, as courts cannot resolve what kind or how much religious instruction would be sufficient to comply without getting unconstitutionally entangled in weighing and assessing religious standards.

## ARGUMENT

The Order below must be reversed because it ignored the plain language of the parties' Parenting Plan and instead entangled the court unnecessarily—and unconstitutionally—in a religious dispute. Applying the Parenting Plan's plain meaning honors the parties' expressed intent and respects their religious and parental rights, as protected by the First Amendment and analogous Arizona laws.

### **I. The Order contradicts the plain terms of the Parenting Plan.**

The trial court's Order cannot be squared with the plain terms of the Parenting Plan. The Plan includes two potentially relevant provisions. First, it expressly allows that each parent "may take the minor children to a church or place of worship of his or her choice, during the time the children [are] in his or her care." [Parenting Plan, IR-14 at 5 ([APP042](#)).] This church-of-choice provision should have been dispositive in Father's favor. In taking his children with him to the Church of Jesus Christ on the weekends when they are in his care, he does precisely what the Parenting Plan permits. *ELM Ret. Ctr. v. Callaway*, [226 Ariz. 287, 290-91, ¶ 15](#) (App. 2010) (contract must be construed according to "the plain meaning of its words").



The second relevant provision permits—but does not mandate—that the children “*may* be instructed in the Christian faith.” [Parenting Plan, IR-14 at 5 ([APP042](#)) (emphasis added).] This provision does not—indeed cannot—override the church-of-choice provision for at least five reasons.

First, on its face, the may-be-instructed provision does not conflict with the church-of-choice provision. Even if the children went to an *admittedly* non-Christian church or to no church at all, they could still be “instructed in the Christian faith,” consistent with the terms of the Parenting Plan. The two provisions speak to two distinct things: church attendance specifically, and religious instruction more generally. Because the church-of-choice provision speaks specifically to the issue at hand, it governs over the more general provision about religious instruction. *Id.* at 291, ¶ 18 (“[S]pecific provisions qualify the meaning of general provisions,” because they “express the parties’ intent more precisely than general provisions.”).

Second, nothing in the may-be-instructed provision states or can reasonably be construed to suggest that instruction in the Christian faith is either mandatory or exclusive. Rather “use of the word ‘may’ indicates permissive intent,” not a “mandatory provision.” *Democratic Party of Pima Cty. v. Ford*, [228 Ariz. 545, 548, ¶ 9](#) (App. 2012) (concluding that “may” is

“permissive,” while “shall” is “mandatory”) (citation omitted); *see also Curtis v. Thomas*, No. 1 CA-CV 18-0587 FC, [2019 WL 2762333](#), at \*2, ¶ 9 (Ariz. Ct. App. July 2, 2019) (memorandum decision) (applying “ordinary meaning of ‘may’” to interpretation of a divorce decree).

Third, the permissive meaning of the word “may” is reinforced when read in context of the entire Parenting Plan. *ELM Ret. Ctr.*, [226 Ariz. at 290-91](#), ¶ 15 (concluding that an agreement must be “viewed in the context of the contract as a whole”). No other, comparable section of the Parenting Plan uses the permissive word “may”; rather, all other provisions use the mandatory terms “will” or “shall.” For example, concerning education arrangements, the Parenting Plan states that the parties “*will* make major educational decisions together.” [IR-14 at 5 ([APP042](#)) (emphasis added).] Where a legal document “uses both permissive and mandatory terms,” courts should presume that the parties were “aware of the difference and intended each word to carry its ordinary meaning.” *Democratic Party of Pima Cty.*, [228 Ariz. at 548](#), ¶ 10; *Curtis*, [2019 WL 2762333](#), at \*2, ¶ 9. Because the parties used “may,” not “shall,” regarding the religious upbringing of their children, this Court should give effect to the permissive flexibility inherent in that term and hold that, while the children “may” be instructed in the

Christian faith, they are not precluded from receiving instruction in other religious faiths, including faiths that one parent or the other may consider outside the Christian faith.

Fourth, reading the use of “may” in the Parenting Plan as mandatory and exclusive, rather than permissive, results in an absurd and internally inconsistent scenario for Father. Just as the religious instruction provision states that the children “*may* be instructed in the Christian faith,” so too the church-of-choice provision states that each parent “*may* take the minor children to a church or place of worship of his or her choice....”[IR-14 at 5 ([APP042](#)) (emphasis added).] If, as the trial court concluded, the Parenting Plan’s use of “may” is mandatory and exclusive, rather than permissive, then Father would be in violation regardless of what he did. In other words, taking the children to the purportedly non-Christian church of his choice would violate the “mandatory” may-be-instructed provision, yet *not* taking the children to the purportedly non-Christian church of his choice would violate the “mandatory” church-of-choice provision. Such a Hobson’s choice interpretation, by which Father would simultaneously be required to, *and* prohibited from, taking the children to his purportedly non-Christian church of choice cannot withstand common sense, much less legal scrutiny.

Fifth, reading the may-be-instructed provision, as did the trial court, to override Father's choice of where to take the children to church renders the church-of-choice provision superfluous. But where possible, no provision should be construed "in a way that renders another meaningless." *ELM Ret. Ctr.*, 226 Ariz. at 291, ¶ 18 (citation omitted). Rather, "each part of a contract must be read together, 'to bring harmony . . . between all parts of the writing.'" *Id.* (citation omitted). Viewed in this light, the Parenting Plan again clearly supports Father's right to take the children with him to his church of choice.

At the July Temporary Orders Hearing, the trial court purported to treat the Parenting Plan like a contract, [07/10/19 Tr. at 21 ([APP076](#))], and conceded that unless Mother was arguing—contrary to the Plan's plain language—"that 'may' really should mean 'shall,'" the parties were "sort of stuck with the words that were included." [*Id.* at 29:18-24 ([APP077](#)).] Yet, instead of holding to that plain-language analysis, the trial court ultimately—and impermissibly—stood the plain language of the Parenting Plan on its head, and in the process, paved the way towards the a "battle of the religious experts," [*id.* at 43:11-20, 44:10-17, 54:2-5 ([APP079](#), [APP080](#), [APP081](#))], at which the trial court compounded its error in undertaking an

unconstitutional foray into deciding the purely religious issue of “what is or is not within the definition of Christianity.” [09/16/19 Tr. at 5:20-24 ([APP088](#)).]

## **II. The Order needlessly and unconstitutionally entangled the trial court in religious questions.**

The trial court’s failure to interpret the Parenting Plan in accordance with the plain meaning of its terms constitutes reversible error. Moreover, its failure to do so, precipitated the trial court’s impermissible entanglement in issues of fundamental, religious doctrine – issues that are constitutionally outside the purview of government/judicial decision-making processes. If this Court decides to enforce the plain meaning of the Parenting Plan, then there is no reason to reach the constitutional issues. But if it does not, then it must also determine whether the Plan, as constructed by the trial court, violates the First Amendment and Arizona Constitution.

Courts have an independent duty to avoid interference in religious affairs, even if the parties invite it. *NLRB v. Catholic Bishop of Chicago*, [440 U.S. 490, 501](#) (1979) (“[I]t is incumbent on [the Court] to determine whether the . . . exercise of its jurisdiction here would give rise to serious constitutional questions.”). This obligation is “a structural one that

categorically prohibits” courts from resolving religious questions. *Lee v. Sixth Mount Zion Baptist Church of Pittsburgh*, 903 F.3d 113, 118 n.4 (3d Cir. 2018); see also *Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036, 1042 (7th Cir. 2006) (Posner, J.), abrogated on other grounds by *Hosanna-Tabor Evangelical Lutheran Church and Sch. v. E.E.O.C.*, 565 U.S. 171 (2012) (noting that a court should “not allow itself to get dragged into a religious controversy”). Yet Mother’s request to preclude Father from taking the children to his church of choice compelled the trial court to do just that. By disregarding the Parenting Plan’s plain meaning, it instead was led into a theological dispute about what it means to be a Christian or to be instructed in the Christian faith. The court should have avoided both questions.

**A. The trial court erred in deciding what it means to be a Christian.**

The First Amendment requires courts to “abstain from deciding” “ecclesiastical matters.” *Ad Hoc Comm. of Parishioners of Our Lady of Sun Catholic Church, Inc. v. Reiss*, 223 Ariz. 505, 510, ¶ 10 (App. 2010) (citations omitted). Among other things, ecclesiastical matters include “theological controvers[ies].” *Id.* at ¶ 12 (quoting *Watson v. Jones*, 80 U.S. 679, 733 (1871)). Thus, for example, as early as 1888, one state court held that “[n]o power

save that of the church can rightfully declare who is a Catholic.” *Dwenger v. Geary*, [14 N.E. 903, 908](#) (Ind. 1888). Another has recognized that no civil court may determine “when a child may be deemed a Jew.” *Zummo v. Zummo*, [574 A.2d 1130, 1149](#) (Pa. Super. Ct. 1990). And the United States Supreme Court has held that Courts cannot determine whether a church has “depart[ed] substantially from [a particular] doctrine,” *Presbyterian Church v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, [393 U.S. 440, 450](#) (1969), or whether members have conformed “to the standard of morals” expected of a particular faith. *Watson*, [80 U.S. at 733](#).

Courts “exercise no jurisdiction” over such matters, *id.*, because there are no “purely secular terms” on which fundamentally religious questions could be decided. *Jones v. Wolf*, [443 U.S. 595, 604](#) (1979). In this case, for example, questions like those posed by Mother’s expert about what is required for Christian salvation, whether the Christian Trinity is more like “water” or “dinner,” whether the Bible is the only word of God or there can be other Christian scripture, or whether Joseph Smith was a Christian prophet are all questions inherently bound up in faith and transcendence — issues that cannot in any meaningful way be resolved by the tools of evidence that define the judicial process. Civil courts simply may not resolve

disputes that involve “doctrinal matters.” *Id.* at 602 (citation omitted); *see also* *Employment Division v. Smith*, 494 U.S. 872, 877 (1990) (government cannot “lend its power to one or the other side in controversies over religious authority or dogma”). And by concluding that Mother’s church is “Christian,” but that Father’s church is not “Christian” (despite its claiming to be), the trial court violated “[t]he clearest command of the Establishment Clause” that “one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982); *see also* *Niehaus v. Huppenthal*, 233 Ariz. 195, 198, ¶ 6 (App. 2013) (stating that interpretation of Arizona’s Religion Clause is “‘virtually indistinguishable’ from . . . the federal Establishment Clause”).

Instead, the trial court should have recognized “the constitutional prerequisite of ‘benign neutrality’ towards *both* parent’s religious viewpoints” and acknowledged that the definition of true Christianity is non-justiciable and outside purview of Arizona courts. *Zummo*, 574 A.2d at 1157 (emphasis in original); *see also* *Serbian E. Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713 (1976) (“[R]eligious controversies are not the proper subject of civil court inquiry.”). The trial court’s error is only underscored by the fact that—when pressed—Mother’s “expert” conceded that, even per his



understanding, to be Christian means to be a “Christ follower,” i.e., “anybody who believes in Jesus, [has] a personal relationship with him, follows him, obeys his teaching, and holds fast to what his word says.” [09/16/19 Tr. at 16:1-13 ([APP099](#)).] Father’s evidence was undisputed that, under this standard, his faith is very much “Christian.” [09/16/19 Tr. at 35-36 ([APP105-06](#)).] The trial court’s decision to focus instead on how different Christ followers define the Trinity or the Christian canon shows how untenable it is for courts to intrude into such religious questions.

**B. The court erred in resolving what it means to be instructed in the Christian faith.**

Even if the Parenting Plan could be construed to require that the children *must* be instructed in Mother’s understanding of the Christian faith, that provision would be unenforceable, because a court cannot determine what it means to “be instructed” in a faith without unconstitutionally entangling itself in religious questions. For example: Would being “instructed” require weekly attendance at church? Enrollment in a religious school? Participation in religious youth activities? Regular home instruction? If so, how regular? Would both parents have to contribute? Or would it be enough that one parent instructs? What is the permissible

curriculum? And what if the parents disagree? Does instructing children in one faith prohibit them from attending another faith's services, or even discussing another faith with a parent? What if the parents have separately agreed that each may take the children to a church of the parent's choice? Such questions demonstrate that compliance with the hypothesized "shall be instructed" provision is impossible to determine without entangling the Court in inherently religious questions regarding what it means to be "instructed" in a particular faith.

For this reason, courts have consistently found similar provisions to be unenforceable. For example, in *Victor v. Victor*, the court found that a clause in an antenuptial agreement instructing the parties to "comply with the 'laws of Moses and Israel'" was unenforceable. [177 Ariz. 231, 234](#) (App. 1993). "Such a vague provision has no specific terms describing a mutual understanding" of what meets the standard. *Id.* Similarly, in *Zummo v. Zummo*, the court refused to enforce an agreement that the children would be "raised as Jews," noting that "[b]oth the subject matter and the ambiguities of the order make excessive entanglement in religious matters inevitable." [574 A.2d at 1145, 1146](#). And in *Lynch v. Uhlenhopp*, the court refused to enforce a divorce decree that required the parties' children to be

“reared in the Roman Catholic Religion,” noting that experts from the same church might easily disagree on what “would meet the test of rearing the child in conformity with the various forms of worship of the church.” 78 N.W.2d 491, 496 (Iowa 1956); see also *Hackett v. Hackett*, 150 N.E.2d 431, 434 (Ohio Ct. App. 1958) (“[T]he provisions of the Separation Agreement, dealing with the promise of the mother to see to it that the daughter ... be reared in the Catholic faith ... cannot be enforced by judicial decree.”).

So too here. A bare statement that children may be “*instructed* in the Christian faith” cannot be assessed without religious entanglement any more than what it means to *be* Christian, because what it means to be instructed in faith, is an inherently religious question. Civil courts simply cannot resolve disputes like this “that would require interpreting religious doctrine or practice” or determine what is sufficient when it comes to religious instruction. *Rashedi v. Gen. Bd. of Church of the Nazarene*, 203 Ariz. 320, 323-324 (App. 2003) (citations omitted); *Dobrota v. Free Serbian Orthodox Church St. Nicholas*, 191 Ariz. 120, 126 (App. 1998), as amended (Feb. 10, 1998). (“[D]isputes . . . cannot be heard by a civil court if the court must resolve underlying controversies over religious doctrine and practice.”).

By the ignoring the church-of-choice provision and misreading the may-be-instructed provision, the trial court was led into a thicket of constitutional and religious disputes that it need not – and constitutionally cannot – enter. This Court should correct this error by simply applying the parties’ Parenting Plan as written.

**III. The trial court erred in ordering Father to pay Mother’s attorneys’ fees.**

The trial court ordered Father to pay \$3,000 of Mother’s attorneys’ fees and costs because it “has found that Father has violated the parties Parenting Plan.” Because the trial court erred in concluding that Father violated the Parenting Plan with respect religious education arrangements, the trial court’s fee award should be reversed.

**REQUEST FOR ATTORNEYS’ FEES**

Under ARCAP 21, A.R.S. § 25-414(C) and A.R.S. § 25-324, Father requests fees and costs incurred on appeal.

**CONCLUSION**

For the foregoing reasons, the Court should reverse the Order below and hold that Father has the right to take his children with him to the church of his choice and to share with them his religious beliefs. The \$3000 in

attorneys' fees imposed against Father for allegedly violating the Parenting Plan should also be reversed.

RESPECTFULLY SUBMITTED this 4th day of March, 2020.

OSBORN MALEDON, P.A.

By /s/ David D. Garner  
David D. Garner  
2929 N. Central Avenue, 21st Floor  
Phoenix, Arizona 85012-2782

Paul C. Riggs  
Riggs Ellsworth & Porter, PLC  
1423 South Higley Road, Suite 113  
Mesa, AZ 85206

Attorneys for Respondent/ Appellant

**APPENDIX  
TABLE OF CONTENTS\***

<b>Index of Record #</b>	<b>Description</b>	<b>Appendix Page Nos.</b>
<b>COURT ISSUED RECORDS</b>		
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42	Minute Entry Ruling (filed Oct. 4, 2019)	APP034 – APP037
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14	Parenting Plan (filed Mar. 12, 2018)	APP038 – APP046
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	Superior Court Temporary Orders Hearing Transcript (July 10, 2019) [excerpts]	APP071 – APP083
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\* The appendix page number matches the electronic PDF page number. Counsel has added emphasis to selected pages in this Appendix using yellow highlighting to assist the Court with its review of the record. Some record items included in the Appendix contain only a limited excerpt. This Appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).



## Electronic Index of Record

### MAR Case # FC2017-096436

No.	Document Name	Filed Date
1.	PETITION FOR DISSOLUTION OF A NON COVENANT MARRIAGE (DIVORCE) WITH MINOR CHILDREN	Dec. 20, 2017
2.	**RESTRICTED** FAMILY COURT/SENSITIVE DATA COVERSHEET WITH CHILDREN	Dec. 20, 2017
3.	AFFIDAVIT REGARDING MINOR CHILDREN	Dec. 20, 2017
4.	ORDER AND NOTICE TO ATTEND PARENT INFORMATION PROGRAM CLASS	Dec. 20, 2017
5.	PRELIMINARY INJUNCTION	Dec. 20, 2017
6.	SUMMONS	Dec. 20, 2017
7.	NOTICE OF YOUR RIGHTS ABOUT HEALTH INSURANCE COVERAGE WHEN A PETITION FOR DISSOLUTION (DIVORCE) IS FILED (A.R.S. 20-1377 AND 20-1408)	Dec. 20, 2017
8.	FAMILY COURT ACCEPTANCE OF SERVICE	Jan. 11, 2018
9.	APPLICATION AND AFFIDAVIT FOR DEFAULT IN FAMILY COURT CASES	Jan. 30, 2018
10.	CERTIFICATE OF COMPLETION: PARENT INFORMATION PROGRAM	Mar. 2, 2018
11.	DEFAULT DECREE OF DISSOLUTION OF A NON COVENANT MARRIAGE WITH CHILDREN	Mar. 12, 2018
12.	CURRENT EMPLOYER INFORMATION	Mar. 12, 2018
13.	CHILD SUPPORT WORKSHEET	Mar. 12, 2018
14.	PARENTING PLAN FOR JOINT LEGAL DECISION MAKING (CUSTODY) WITH JOINT LEGAL DECISION MAKING (CUSTODY) AGREEMENT	Mar. 12, 2018
15.	CERTIFICATE OF COMPLETION: PARENT INFORMATION PROGRAM	Apr. 28, 2019
16.	NOTICE OF APPEARANCE	May. 6, 2019
17.	ACCELERATED VERIFIED MOTION FOR TEMPORARY ORDERS	May. 6, 2019
18.	PETITION FOR ORDER TO APPEAR RE: ENFORCEMENT RE: LEGAL DECISION-MAKING	May. 6, 2019



**Electronic Index of Record**  
**MAR Case # FC2017-096436**

No.	Document Name	Filed Date
19.	PETITION FOR MODIFICATION OF PARENTING TIME AND DECREE OF DISSOLUTION RE: OMITTED ASSET	May. 6, 2019
20.	NOTICE OF ERRATA RE: PETITION FOR MODIFICATION OF PARENTING TIME AND DECREE OF DISSOLUTION RE: OMITTED ASSET	May. 8, 2019
21.	CERTIFICATE OF SERVICE BY PRIVATE PROCESS SERVER	May. 10, 2019
22.	NOTICE OF FILING PETITIONER/MOTHER'S AFFIDAVIT OF FINANCIAL INFORMATION	May. 14, 2019
23.	<b>**RESTRICTED**</b> AFFIDAVIT OF FINANCIAL INFORMATION - AFFIDAVIT OF KATHLEEN MARIE GUTHRIE	May. 14, 2019
24.	NOTICE OF APPEARANCE AS ATTORNEY OF RECORD FOR RESPONDENT	May. 24, 2019
25.	ORDER TO APPEAR RE: ACCELERATED VERIFIED MOTION FOR TEMPORARY ORDERS RE: SUMMER PARENTING TIME AND ENFORCEMENT OF LEGAL DECISION-MAKING RE: RELIGION	Jun. 4, 2019
26.	RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR MODIFICATON(SIC) OF PARENTING TIME AND DECREE OF DISSOLUTION RE: OMITTED ASSET	Jun. 10, 2019
27.	RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR ORDER TO APPEAR RE: ENFORCEMENT RE: LEGAL DECISION-MAKING	Jun. 10, 2019
28.	RESPONDENT'S RESPONSE TO PETITIONER'S PETITION FOR ORDER TO APPEAR RE: ENFORCEMENT RE: LEGAL DECISION-MAKING	Jun. 10, 2019
29.	ACCEPTANCE OF SERVICE OF PROCESS BY COUNSEL	Jun. 13, 2019
30.	NOTICE OF CHANGE OF ADDRESS FOR ATTORNEY OF RECORD FOR RESPONDENT	Jun. 21, 2019
31.	RESPONDENT'S SEPARATE PRETRIAL STATEMENT	Jul. 8, 2019
32.	PETITIONER/MOTHER'S SEPARATE PREHEARING STATEMENT	Jul. 9, 2019
33.	<b>ME: HEARING SET [07/10/2019]</b>	<b>Jul. 11, 2019</b>
34.	EXHIBIT WORKSHEET HD 07/10/2019	Jul. 18, 2019





## Electronic Index of Record

### MAR Case # FC2017-096436

No.	Document Name	Filed Date
35.	MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR RESPONDENT WITH CONSENT	Jul. 26, 2019
36.	ORDER GRANTING MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR RESPONDENT WITH CONSENT	Aug. 9, 2019
37.	MOTHER'S SEPARATE PRETRIAL STATEMENT FOR TRIAL CURRENTLY SET FOR SEPTEMBER 16, 2019 AT 10:00 A.M.	Sep. 9, 2019
38.	NOTICE OF ERRATA RE: MOTHER'S SEPARATE PRETRIAL STATEMENT FOR TRIAL CURRENTLY SET FOR SEPTEMBER 16, 2019 AT 10:00 A.M.	Sep. 13, 2019
39.	ORDER REFERRING TO CONCILIATION FOR CHILD INTERVIEW	Sep. 16, 2019
40.	<b>ME: CASE ON INACTIVE CALENDAR [09/16/2019]</b>	<b>Sep. 18, 2019</b>
41.	EXHIBIT WORKSHEET HD 09/16/2019	Sep. 27, 2019
42.	<b>ME: UNDER ADVISEMENT RULING [09/16/2019]</b>	<b>Oct. 4, 2019</b>
43.	NON-CONFIDENTIAL CHILD INTERVIEW REPORT	Oct. 22, 2019
44.	MOTION TO CONTINUE ON INACTIVE CALENDAR FOR 60 DAYS	Oct. 23, 2019
45.	NOTICE OF APPEAL	Nov. 1, 2019

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APPEAL COUNT: 1

RE: CASE: UNKNOWN

DUE DATE: 11/27/2019

CAPTION: BALL VS BALL

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EXHIBIT(S): HD 07/10/2019 - LIST #20 23 IN MANILA ENVELOPE

HD 09/16/2016 - LIST #3 12 22 27 29 IN MANILA ENVELOPE

LOCATION ONLY: NONE



**Electronic Index of Record  
MAR Case # FC2017-096436**

SEALED DOCUMENT: NONE

DEPOSITION(S): NONE

TRANSCRIPT(S): NONE

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COMPILED BY: phillipst001 on November 27, 2019; [2.5-17026.63]  
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CERTIFICATION: I, JEFF FINE, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify that the above listed Index of Record, corresponding electronic documents, and items denoted to be transmitted manually constitute the record on appeal in the above-entitled action.

The bracketed [date] following the minute entry title is the date of the minute entry.

CONTACT INFO: Clerk of the Superior Court, Maricopa County, Appeals Unit, 175 W Madison Ave, Phoenix, AZ 85003; 602-372-5375

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

10.4.2019 @ 8:00am

FC 2017-096436

09/16/2019

HONORABLE MICHAEL MANDELL

CLERK OF THE COURT  
T. Galindo  
Deputy

IN RE THE MATTER OF  
KATHLEEN MARIE BALL

AUDRA ELIZABETH PETROLLE

AND

SHAWN A BALL

SHAWN A BALL  
3350 S CONESTOGA RD  
APACHE JUNCTION AZ 85119

JUDGE MANDELL

MINUTE ENTRY

On September 16, 2019, the Court held a continuation hearing on Petitioner/Mother's *Petition for Order to Appear Re: Enforcement Re: Legal Decision Making*. Specifically, Mother argued that Respondent/Father had violated the parties' March 12, 2018 Parenting Plan by (1) instructing the Children in the Mormon religion, rather than the agreed upon Christian Faith; (2) blocking Mother from communication with Father; (3) authorizing medical treatment for the parties' daughter without informing Mother; and (4) involving the Children in the parties' divorce. The Court has since considered the evidence, including the demeanor of the witnesses, reviewed the exhibits as well as the case history, and considered the parties' arguments. After deliberation, the Court makes the following findings and enters the following orders:

Religion

In the parties' Parenting Plan, both parties agreed that each parent could take the Children to a church or place of worship of their choice during their parenting time, but that the Children would be instructed in the Christian Faith. Father, who was attending a Christian

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2017-096436

09/16/2019

church during the marriage, began attending a Mormon church after the divorce and began taking the Children to his new church. Mother objected that Mormonism and Christianity are different religions and that Father was violating the agreement by taking the Children to a Mormon church.

At the hearing, the Court heard from a religious expert on the differences between Christianity and Mormonism. Father provided no evidence to the Court on this issue. Based on the evidence provided, the Court finds that at the time the parties entered into the Parenting Plan, both parties were practicing the Christian faith and agreed the Children would be instructed only in that faith. Mormonism is a separate and distinct religion from Christianity with substantially different teachings. (Exh. 29) Accordingly, pursuant to the Parenting Plan, both parties are limited to instructing the Children in the Christian faith. Absent agreement of the parties otherwise, the Court finds that Mormonism does not fall within the confines of Christian faith and thus instructing the Children in a faith other than Christianity violates the Parenting Plan.

**IT IS ORDERED** that the Mormon faith is not part of the Christian faith as set forth in the parties' Parenting Plan and absent agreement of the parties, the Children shall only be instructed in the Christian faith, which does not include Mormonism.

**Blocking Communications**

Father admitted to willfully blocking Mother from communications with him.

**IT IS ORDERED** that neither parent shall block the other parent from communications. Doing so is not in the Children's best interests.

**Medical Treatment**

Mother provided evidence that Father authorized his wife to take the parties' daughter to a doctor related to a knee issue that the Child had. Father stated that he sent Mother an email regarding the issue and she did not respond. Mother denied receiving the email and being informed either before or after the daughter received treatment. Father did not provide any documentary evidence of the communication, nor did he deny not informing Mother after the Child had seen the doctor.

**IT IS ORDERED** that each parent shall ensure that the other parent is informed of any doctor's appointments and any proposed non-emergency medical treatment before the appointment occurs or treatment is provided. Such communication shall occur electronically to ensure there is a record of the communication.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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**Involving the Children in Disputes**

Mother argues that Father has involved the Children in disputes between the parties. Father denies that he is doing anything to alienate the Children from Mother. As evidence, Mother provided a text and email, which shows that the parties' daughter was communicating about an issue the parties had discussed. This incident occurred over one year ago and simultaneously with the parties' divorce proceedings when tensions and emotions are near their peak.

Accordingly, the Court will admonish both parties that they must not involve the Children in any court proceeding or take any actions that would constitute alienation of the other parent. The parties shall allow the Children to be Children and shall not involve them in adult matters pertaining to parenting or any court proceedings.

**Attorneys' Fees**

Mother has requested an award of attorneys' fees and costs. Pursuant to A.R.S. § 25-414(C), "Court costs and attorney fees incurred by the nonviolating parent associated with the review of noncompliance with the visitation or parenting time orders shall be paid by the violating parent."

Here, the Court has found that Father has violated the parties' Parenting Plan.

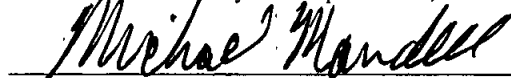
**IT IS THEREFORE ORDERED** granting the request for attorneys' fees and costs of Mother.

**IT IS FURTHER ORDERED** that Father shall pay a portion of Mother's reasonable attorneys' fees and costs in the amount of \$3,000 by November 29th, 2019.

**IT IS FURTHER ORDERED** signing this minute entry as a formal order of this Court pursuant to Rule 78(c), Arizona Rules of Family Law Procedure.

No further matters remain pending.

Dated this 16<sup>th</sup> day of September, 2019



HONORABLE MICHAEL MANDELL  
JUDICIAL OFFICER OF THE SUPERIOR COURT

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2017-096436

09/16/2019

All parties representing themselves must keep the Court updated with address changes.  
A form may be downloaded at:  
<http://www.superiorcourt.maricopa.gov/SuperiorCourt/LawLibraryResourceCenter/>

Person Filing: Kathleen Marie Ball  
Address (if not protected): 201 W. Hermosa Dr Apt M203  
City, State, Zip Code: Tempe, AZ 85282  
Telephone: 602 478 7275  
Email Address: Kmball68@gmail.com  
ATLAS Number: \_\_\_\_\_  
Lawyer's Bar Number: \_\_\_\_\_

FILED  
03/12/2018 8:31 am  
MICHAEL K. JEANES, Clerk  
By M. Medina  
M. Medina, Deputy  
For Clerk's Use Only

Representing ☒ Self, without a Lawyer or ☐ Attorney for ☐ Petitioner OR ☐ Respondent

## SUPERIOR COURT OF ARIZONA IN MARICOPA COUNTY

Kathleen Marie Ball  
Name of Petitioner

Case Number: FC2017-096436

### PARENTING PLAN FOR:

AND

☒ JOINT LEGAL DECISION MAKING  
(CUSTODY) WITH JOINT LEGAL  
DECISION MAKING (CUSTODY)  
AGREEMENT

or

☐ SOLE LEGAL DECISION-MAKING  
(CUSTODY)

☐ to Mother

☐ to Father

Shawn Allen Ball  
Name of Respondent

### INSTRUCTIONS

This document has 4 parts: PART 1) General Information; PART 2) Legal Decision Making (Custody) and Parenting Time; PART 3) Danger to Children Notification Statement; and PART 4) Joint Legal Decision Making (Custody) Agreement. Where this form refers to "children" it refers to any and all minor children common to the parties whether one or more.

One or both parents must complete and sign the Plan as follows:

- If only one parent is submitting the Plan: that parent must sign at the end of PART 2 and 3.
- If both parents agree to legal decision making (custody) and parenting time arrangements *but not to joint legal decision making (custody)*: Both parents must sign the Plan at the end of PART 2 and 3.
- If both parents agree to joint legal decision making (custody) and parenting time arrangements as presented in the Plan: Both parents must sign the Plan at the end of PART 2, 3, and 4.

**PART 1: GENERAL INFORMATION:**

- A. MINOR CHILDREN.** This Plan concerns the following minor children:  
(Use additional paper if necessary)

Angela Marie Ball  
Bredley Christian Ball

**B. THE FOLLOWING LEGAL DECISION-MAKING (CUSTODY) ARRANGEMENT IS REQUESTED:**

(Choose ONE of 1, 2, 3, 4.) (If you chose "sole legal decision-making authority" [1 or 2], you have the option of also requesting restrictions on the parenting time of the other party.

- ☐ **1. SOLE LEGAL DECISION-MAKING (CUSTODY) BY AGREEMENT.** The parents agree that sole legal decision-making authority (custody) and primary physical custody should be granted to the ☐ Mother ☐ Father.

The parents agree that since each has a unique contribution to offer to the growth and development of their minor children, each of them will continue to have a full and active role in providing a sound moral, social, economic, and educational environment for the benefit of the minor children, as described in the following pages.

OR

- ☐ **2. SOLE LEGAL DECISION-MAKING (CUSTODY) REQUESTED BY THE PARENT SUBMITTING THIS PLAN.** The parents cannot agree to the terms of legal decision making (custody) and parenting time. The parent submitting this Plan asks the court to order sole legal decision-making authority and parenting time according to this Plan.

(Optional, if you marked 1 or 2 above)

- ☐ **RESTRICTED, SUPERVISED, OR NO PARENTING TIME.**

The parent submitting this Plan asks the court for an order restricting parenting time. The facts and information related to this request are described in the Petition.

OR

- ☒ **3. JOINT LEGAL DECISION-MAKING (CUSTODY) BY AGREEMENT.** The parents agree to joint legal decision-making (custody) and request the court to approve the joint legal decision-making (custody) arrangement as described in this Plan. Primary physical custody will be with the ☒ Mother ☒ Father,

OR



- ☐ **4. JOINT LEGAL DECISION-MAKING AUTHORITY (CUSTODY) REQUESTED BY THE PARENT SUBMITTING THIS PLAN.** The parents cannot agree to the terms of legal decision making and parenting time or are unable to submit this plan together at this time. My request for joint legal decision-making authority is deferred for the court's determination.

**PART 2: PHYSICAL CUSTODY AND PARENTING TIME.** Complete each section below. Be specific about what you want the judge to approve in the court order.

**A. (School Year) WEEKDAY AND WEEKEND TIME-SHARING SCHEDULE:**

- ☒ The minor children will be in the care of Father as follows: (Explain).  
Sunday PM to Friday AM (school drop off)
- ☒ The minor children will be in the care of Mother as follows: (Explain).  
Friday PM to Sunday PM
- ☒ Other physical custody arrangements are as follows: (Explain).  
Weekends + weekdays exchanged as needed for special occasions.
- ☒ Transportation will be provided as follows:
- ☒ Mother or ☐ Father will pick the minor children up at 6:00 pm o'clock.
- ☒ Mother or ☐ Father will drop the minor children off at 6:00 pm o'clock.

Parents may change their time-share arrangements by mutual agreement with at least 0 days notice in advance to the other parent.

**B. SUMMER MONTHS OR SCHOOL BREAK LONGER THAN 4 DAYS:** The weekday and weekend schedule described above will apply for all 12 calendar months EXCEPT:

- ☐ During summer months or school breaks that last longer than 4 days, no changes shall be made. OR,
- ☒ During summer months or school breaks that last longer than 4 days, the minor children will be in the care of Father: (Explain)  
As needed due to work schedules
- ☒ During summer months or school breaks that last longer than 4 days, the minor children will be in the care of Mother: (Explain)  
As needed due to work schedules
- ☒ Each parent is entitled to a 4 week period of vacation time with the minor children. The parents will work out the details of the vacation at least 7 days in advance.

**C. TRAVEL**

☒ Should either parent travel out of the area with the minor children, each parent will keep the other parent informed of travel plans, address(es), and telephone number(s) at which that parent and the minor children can be reached.

☐ Neither parent shall travel with the minor children outside Arizona for longer than \_\_\_\_ days without the prior written consent of the other parent or order of the court.

**D. HOLIDAY SCHEDULE:** The holiday schedule takes priority over the regular time-sharing schedule as described above. Check the box(es) that apply and indicate the years of the holiday access/Parenting time schedule.

Holiday		Even Years		Odd Years	
<input checked="" type="checkbox"/> New Year's Eve	<input checked="" type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>
<input checked="" type="checkbox"/> New Year's Day	<input checked="" type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>
<input checked="" type="checkbox"/> Spring Vacation	<input checked="" type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>
<input checked="" type="checkbox"/> Easter	<input checked="" type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>
<input checked="" type="checkbox"/> 4th of July	<input checked="" type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>
<input checked="" type="checkbox"/> Halloween	<input checked="" type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>
<input checked="" type="checkbox"/> Veteran's Day	<input type="checkbox"/>	Mother	<input checked="" type="checkbox"/>	Father	<input checked="" type="checkbox"/>
<input checked="" type="checkbox"/> Thanksgiving	<input checked="" type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>
<input checked="" type="checkbox"/> Hanukkah	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>
<input checked="" type="checkbox"/> Christmas Eve	<input checked="" type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>
<input checked="" type="checkbox"/> Christmas Day	<input checked="" type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>
<input checked="" type="checkbox"/> Winter Break	<input checked="" type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>
<input checked="" type="checkbox"/> Child's Birthday	<input type="checkbox"/>	Mother	<input type="checkbox"/>	Father	<input type="checkbox"/>

Mother's Day will be celebrated with the Mother every year.

Father's Day will be celebrated with the Father every year.

Each parent may have the children on his or her birthday.

Three-day weekends which include Martin Luther King Day, Presidents' Day, Memorial Day, Labor Day, Columbus Day, the children will remain in the care of the parent who has the minor children for the weekend.

☒ Other Holidays (Describe the other holidays and the arrangement):

Any holidays per school breaks will be rotated based on

☒ Telephone Contact: Each parent may have telephone contact with the minor children during work schedules the children's normal waking hours, OR: (Explain) \_\_\_\_\_

☒ Other (Explain): Children's birthdays split based on day the date falls on and what's best for work schedules.

**E. PARENTAL ACCESS TO RECORDS AND INFORMATION:** Under Arizona law (A.R.S. §25-403.06), unless otherwise provided by court order or law, on reasonable request, both parents are entitled to have equal access to documents and other information concerning the minor children's education and physical, mental, moral and emotional health including medical, school, police, court and other records. A person who does not comply with a reasonable request for these records shall reimburse the requesting parent for court costs and attorney fees incurred by that parent to make the other parent obey this request. A parent who attempts to restrict the release of documents or information by the custodian of the records without a prior court order is subject to legal sanctions.

**F. EDUCATIONAL ARRANGEMENTS:**

- ☒ Both parents have the right to participate in school conferences, events and activities, and the right to consult with teachers and other school personnel.
- ☒ Both parents will make major educational decisions together. (optional) ☐ If the parents do not reach agreement, then:

OR

- ☐ Major educational decisions will be made by ☐ Mother ☐ Father after consulting other parent.

**G. MEDICAL AND DENTAL ARRANGEMENTS:**

- ☒ Both parents have the right to authorize emergency medical treatment, if needed, and the right to consult with physicians and other medical practitioners. Both parents agree to advise the other parent immediately of any emergency medical/dental care sought for the minor children, to cooperate on health matters concerning the children and to keep one another reasonably informed. Both parents agree to keep each other informed as to names, addresses and telephone numbers of all medical/dental care providers.
- ☒ Both parents will make major medical decisions together, except for emergency situations as noted above. (optional) ☐ If the parents do not reach an agreement, then: \_\_\_\_\_

OR

- ☐ Major medical/dental decisions will be made by ☐ Mother ☐ Father after consulting other parent.

**H. RELIGIOUS EDUCATION ARRANGEMENTS: (Choose ONE)**

- ☒ Each parent may take the minor children to a church or place of worship of his or her choice during the time that the minor children is/are in his or her care.
- ☒ Both parents agree that the minor children may be instructed in the Christian faith.
- ☐ Both parents agree that religious arrangements are not applicable to this plan.

**I. ADDITIONAL ARRANGEMENTS AND COMMENTS:**

- ☒ **NOTIFY OTHER PARENT OF ADDRESS CHANGE.** Each parent will inform the other parent of any change of address and/or phone number in advance OR within 7 days of the change.
- ☒ **NOTIFY OTHER PARENT OF EMERGENCY.** Both parents agree that each parent will promptly inform the other parent of any emergency or other important event that involves the minor children

- ☒ **TALK TO OTHER PARENT ABOUT EXTRA ACTIVITIES.** Each parent will consult and agree with the other parent regarding any extra activity that affects the minor children's access to the other parent.
- ☒ **ASK OTHER PARENT IF HE/SHE WANTS TO TAKE CARE OF CHILDREN.** Each parent agrees to consider the other parent as care-provider for the minor children before making other arrangements.
- ☒ **OBTAIN WRITTEN CONSENT BEFORE MOVING.** Neither parent will move with the minor children out of the Phoenix metropolitan area without prior written consent of the other parent, or a court ordered Parenting Plan. A.R.S. 25-408 (B)
- ☒ **COMMUNICATE.** Each parent agrees that all communications regarding the minor children will be between the parents and that they will not use the minor children to convey information or to set up parenting time changes.
- ☒ **METHOD OF COMMUNICATION.** Each parent agrees to use the following means of communication:  
Text 1st OR Email. OR PHONE CALL.
- ☒ **FREQUENCY OF COMMUNICATION.** Each parent agrees to communicate regarding the child(ren) on a regular basis. That communication schedule will be:  
upon drop off / pick up or as needed  
 and will be by the following methods: ☒ Phone ☒ Email ☒ Other Text
- ☒ **PRAISE OTHER PARENT.** Each parent agrees to encourage love and respect between the minor children and the other parent, and neither parent shall do anything that may hurt the other parent's relationship with the minor children
- ☒ **COOPERATE AND WORK TOGETHER.** Both parents agree to exert their best efforts to work cooperatively in future plans consistent with the best interests of the minor children and to amicably resolve such disputes as may arise.
- ☒ **NOTIFY OTHER PARENT OF PROBLEMS WITH TIME-SHARING AHEAD OF TIME.** If either parent is unable to follow through with the time-sharing arrangements involving the minor child(ren), that parent will notify the other parent as soon as possible.
- ☒ **PARENTING PLAN.** Both parents agree that if either parent moves out of the area and returns later, they will use the most recent "Parenting Plan/Access Agreement" in place before the move.



**MEDIATION.** If the parents are unable to reach a mutual agreement regarding a legal change to their parenting orders, they may request mediation through the court or a private mediator of their choice.

**NOTICE: DO NOT DEVIATE FROM PLAN UNTIL DISPUTE IS RESOLVED.**

Both parents are advised that while a dispute is being resolved, neither parent shall deviate from this Parenting Plan, or act in such a way that is inconsistent with the terms of this agreement.

Once this Plan has been made an order of the Court, if either parent disobeys the court order related to parenting time with the children, the other parent may submit court papers to request enforcement. See the Self-Service Center packets "To Make Someone Obey a Court Order" for help.

**J. PART 2 SIGNATURE OF ONE OR BOTH PARENTS** (as instructed on page 1)

Signature of Mother: Kathleen Ball Date: 1/27/18

Signature of Father: [Signature] Date: 1/27/18

**PART 3: STATEMENT REGARDING CONTACT WITH SEX OFFENDERS AND PERSONS CONVICTED OF DANGEROUS CRIMES AGAINST CHILDREN.**

According to A.R.S. §25-403.05, a child's parent or custodian must immediately notify the other parent or custodian if the person knows that a convicted or registered sex offender or someone who has been convicted of a dangerous crime against children may have access to the child.

The parent or custodian must provide notice by first class mail, return receipt requested, by electronic means to an electronic mail address that the recipient provided to the parent or custodian for notification purposes or by another form of communication accepted by the court.

According to A.R.S. § 13-705 (P) (1), "Dangerous crime against children" means any of the following that is committed against a minor who is under fifteen years of age:

- (a) Second degree murder.
- (b) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.
- (c) Sexual assault.
- (d) Molestation of a child.
- (e) Sexual conduct with a minor.
- (f) Commercial sexual exploitation of a minor.
- (g) Sexual exploitation of a minor.
- (h) Child abuse as prescribed in section 13-3623, subsection A, paragraph 1.
- (i) Kidnapping.
- (j) Sexual abuse.
- (k) Taking a child for the purpose of prostitution as prescribed in section 13-3206.
- (l) Child prostitution as prescribed in section 13-3212.
- (m) Involving or using minors in drug offenses.
- (n) Continuous sexual abuse of a child.
- (o) Attempted first degree murder.
- (p) Sex trafficking.
- (q) Manufacturing methamphetamine under circumstances that cause physical injury to a minor.
- (r) Bestiality as prescribed in section 13-1411, subsection A, paragraph 2.
- (s) Luring a minor for sexual exploitation.
- (t) Aggravated luring a minor for sexual exploitation.
- (u) Unlawful age misrepresentation.

**PART 3 SIGNATURE OF ONE OR BOTH PARTIES** (as instructed on page 1)

I/We have read, understand, and agree to abide by the requirements of A.R.S. § 25-403.05 concerning notification of other parent or custodian if someone convicted of dangerous crime against children may have access to the child.

Signature of Mother: Kathleen Ricci Date: 1/27/18

Signature of Father: [Signature] Date: 1/27/18

**PART 4: JOINT LEGAL DECISION MAKING (CUSTODY) AGREEMENT**  
(IF APPLICABLE):

- A. DOMESTIC VIOLENCE:** Arizona Law (A.R.S. § 25-403.03) states that joint legal decision-making authority (custody) shall NOT be awarded if there has been "a history of significant domestic violence".



Domestic Violence has not occurred between the parties, OR



Domestic Violence has occurred but it has not been "significant" or has been committed by both parties.\*

**B. DUI or DRUG CONVICTIONS:**

Neither party has been convicted of driving under the influence or a drug offense within the past 12 months, OR



One of the parties HAS been convicted of driving under the influence or a drug offense within the past 12 months but the parties feel Joint Legal Decision-Making (Custody) is in the best interest of the children.\*

**\* IF THERE HAS BEEN DOMESTIC VIOLENCE OR A DUI OR DRUG CONVICTION:  
Attach an extra page explaining why Joint Legal Decision-Making (Custody) is still in the  
best interest of the children.**

**C. JOINT LEGAL DECISION MAKING (CUSTODY) AGREEMENT:** If the parents have agreed to joint legal decision making (custody), the following will apply, subject to approval by the Judge:

1. **REVIEW:** The parents agree to review the terms of this agreement and make any necessary or desired changes every 12 month(s) from the date of this document.
2. **CRITERIA.** Our joint legal decision making (custody) agreement meets the criteria required by Arizona law A.R.S. § 25-403.02, as listed below:
  - a. The best interests of the minor children are served;
  - b. Each parent's rights and responsibilities for personal care of the minor children and for decisions in education, health care and religious training are designated in this Plan;
  - c. A practical schedule of the parenting time for the minor children, including holidays and school vacations is included in the Plan;
  - d. A procedure for the exchange(s) of the child(ren) including location and responsibility for transportation.
  - e. The Plan includes a procedure for periodic review;
  - f. The Plan includes a procedure by which proposed changes, disputes and alleged breaches may be mediated or resolved
  - g. A procedure for communicating with each other about the child, including methods and frequency.

**PART 4 SIGNATURES OF BOTH PARENTS REQUESTING JOINT LEGAL DECISION MAKING AUTHORITY (CUSTODY)** (as instructed on page 1)

Signature of Mother:

Kathleen Ball

Date:

1/27/18

Signature of Father:

[Signature]

Date:

1/27/18

25.2020 330pm  
Healundo Deputy

Audra E. Petrolle, State Bar No. 031765  
 Rose Law Group pc  
 Rich Carter Fisher  
 7144 E. Stetson Drive, Suite 300  
 Scottsdale, Arizona 85251  
 Phone: 480.240.5649  
 Fax: 480.505.3925  
 E-Mail: APetrolle@RoseLawGroup.com  
 Attorneys for Petitioner/Mother

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 IN AND FOR THE COUNTY OF MARICOPA

In Re the Matter of:

Case No.: FC2017-096436

**KATHLEEN MARIE BALL n/k/a  
 KATHLEEN MARIE GUTHRIE,**

**STIPULATED ORDER RE:  
 MODIFICATION OF PARENTING  
 TIME AND MODIFICATION OF  
 DECREE RE: OMITTED ASSET**

Petitioner/Mother,

and

(Assigned to the Honorable Michael  
 Mandell)

**SHAWN ALLEN BALL,**

Respondent/Father.

Pursuant to the parties' binding and enforceable Rule 69 Agreement, entered into on  
 January 4, 2020, and good cause appearing,

**THE COURT FINDS** as follows:

1. The parties are submitting their agreements to the Court in the form of this  
 Stipulated Order, pursuant to Rule 69, *Arizona Rules of Family Law Procedure*.



1           2.     Petitioner's name is **KATHLEEN MARIE BALL n/k/a KATHLEEN MARIE**  
2 **GUTHRIE**, whose address is 2633 E. Enrose St, Mesa, AZ. 85213.<sup>1</sup> Mother's date of birth is  
3 September 14, 1968 (age 51).  
4

5           3.     Respondent's name is **SHAWN ALLEN BALL** (hereinafter "Father"), whose  
6 address is 3350 S. Conestoga Rd, Apache Junction, AZ 85119. Father's date of birth is February  
7 19, 1972 (age 47).  
8

9           4.     The parties were married to one another on November 12, 1999.  
10

11           5.     The parties were divorced pursuant to the Default Decree of Dissolution of  
12 Marriage (hereinafter "Decree"), which was entered on March 12, 2018.  
13

14           6.     The parties have two (2) minor children in common, namely: **ANGELA MARIE**  
15 **BALL** (hereinafter "Angela"), born February 28, 2003 (age 16), and **BRADLEY CHRISTIAN**  
16 **BALL** (hereinafter "Bradley"), born March 20, 2006 (age 13).  
17

18           7.     The parties' minor children have resided with both parents in the State of Arizona,  
19 County of Maricopa and County of Pinal,<sup>2</sup> since the entry of the last parenting time orders in this  
20 matter. This Court has exclusive, continuing subject matter jurisdiction to modify its existing  
21 parenting time orders in accordance with the Uniform Child Custody Jurisdiction and  
22 Enforcement Act (A.R.S. § 25-1001, et seq.), and venue in this county is proper.  
23  
24  
25

26 <sup>1</sup> Mother is in the process of moving and anticipates being in her new home by the end of January 2020.

27 <sup>2</sup> Each parent was designated as primary residential parent pursuant to the parties' Default Decree.  
Decree at ¶ 5.

1           8.     The parties have attended the Parent Information Program Class, as required by  
2 A.R.S. § 25-351, *et seq.*, and as reflected by the Certificates of Completion already on file with  
3 the Court.  
4

5           9.     Mother filed a Petition for Modification of Parenting Time and Decree of  
6 Dissolution Re: Omitted Asset on May 6, 2019.

7           10.    Father filed his Response to Mother's Petition for Modification of Parenting Time  
8 and Decree of Dissolution Re: Omitted Asset on June 10, 2019.  
9

10          11.    Thereafter, the parties entered into a Rule 69 Agreement on January 4, 2020, a  
11 copy of which is incorporated herein by reference and attached hereto as **Exhibit "A"**.

12          12.    The parties' Rule 69 Agreement memorializes that, "Upon execution of an updated  
13 Parenting Plan, the parties agree to stipulate to dismissal of the pending action regarding the  
14 Petition for Modification of Parenting Time and Decree of Dissolution Re: Omitted Asset."  
15

16          13.    The parties have knowingly, voluntarily, and intelligently entered into this  
17 Stipulated Order, neither party has entered into this Stipulated Order under duress or coercion,  
18 and the parties agree that each and every provision of this Stipulated Order is in the best interests  
19 of the parties' minor children, namely: **ANGELA MARIE BALL**, born February 28, 2003 (age  
20 16), and **BRADLEY CHRISTIAN BALL**, born March 20, 2006 (age 13).  
21

22          14.    This Court hereby independently finds that the provisions of this Stipulated Order  
23 are, in fact, in the best interests of the parties' minor children.  
24

25          15.    The parties stipulate and agree that there has been a substantial and continuing  
26 change of circumstances since the date of entry of the parties' last parenting time orders. As  
27

1 such, modification of the parties' last parenting time orders is deemed to be appropriate by this  
2 Court.

3 16. A modification of parenting time is permissible under A.R.S. § 25-411(A) as more  
4 than one (1) year has passed since the date of entry of the parties' last parenting time orders.  
5

6 17. The parties further stipulate and agree that pursuant to their Decree they intended  
7 to divide all community property, and that Father was required to refinance the parties' marital  
8 residence following entry of the Decree. Decree at 5, ¶ 11. Upon refinancing the property, Father  
9 received a check refunding certain monies from the parties' joint escrow account tied to the  
10 marital residence. The parties agree that Mother is entitled to her community interest in this  
11 omitted and/or after discovered asset in accordance with A.R.S. § 25-318(D). The parties agree  
12 that Father shall tender payment to Mother in the amount of \$1,048.74 as satisfaction of her  
13 community interest in the escrow refund check.  
14  
15

16 18. Mother has retained legal counsel of her choosing and is represented by Audra E.  
17 Petrolle, of ROSE LAW GROUP pc, 7144 East Stetson Drive, Suite 300, Scottsdale, Arizona  
18 85251.  
19

20 19. Father has had ample opportunity to retain legal counsel of his choosing, but has  
21 knowingly, intelligently and voluntarily chosen to represent himself in this matter following  
22 withdrawal of his former attorney of record, Steven N. Cole, 1111 N. Scottsdale Road, Suite  
23 245, Scottsdale, Arizona 85254.  
24  
25  
26  
27



1           **IT IS HEREBY ORDERED** as follows:

2           **A.           PRIOR ORDERS:**

3           1.       All prior Orders in this matter shall remain in full force and effect unless otherwise  
4 specifically modified or vacated herein.

5           **B.           PARENTING TIME:**

6           1.       The parties shall share regular access, equal parenting time on a week on/week off  
7 basis throughout the entire year, with the exception of Summer Break and Winter Break.  
8 Summer Break and Winter Break shall supersede the regular access schedule.  
9

10          2.       For purposes of Summer Break, the parties shall share equal parenting time on a 2  
11 week on/2 week off basis throughout the Summer Break.

12          3.       For purposes of Winter Break, the parties shall divide Winter Break into two equal  
13 blocks of time, and the party who has the children during Christmas week shall alternate each  
14 year. For purposes of Winter Break 2019, the parties agreed to evenly split the Winter Break  
15 with Father having the children during Christmas week. For purposes of Winter Break 2020, the  
16 parties agree to evenly split the Winter Break with Mother having the children during Christmas  
17 week.  
18

19          4.       All other holidays shall follow the week on/week off regular access schedule  
20 and/or 2 weeks on/2 weeks off Summer schedule.

21          5.       Father has requested parenting time between 6/14/20-6/28/20. In exchange,  
22 Mother shall be permitted to select any other non-school days over the course of the Summer  
23 Break in exchange for any of Mother's normally scheduled days allocated to Father between  
24  
25  
26  
27

1 6/14/20-6/28/20 pursuant to this request. The parties' agreement to exchange parenting time days  
2 for purposes of Summer Break 2020 is confirmed.

3 6. Parenting time exchanges will take place every Friday upon release from school  
4 or if there is no school at 6:00 p.m.

5 7. The Receiving parent shall be responsible for picking up the children from school  
6 or at the other party's residence, or shall be responsible for arranging bus transportation for the  
7 children.  
8

9 8. Pursuant to the parties' Rule 69 Agreement, the parties shall enter into an updated  
10 Parenting Plan.  
11

12 **C. OMITTED ASSET:**

13 1. Pursuant to A.R.S. § 25-318, Mother is awarded her community interest any funds  
14 received from the parties' joint escrow account refund received by Father after entry of the  
15 parties' Decree.  
16

17 2. Father shall tender payment to Mother in the amount of \$1,048.74 no later than  
18 March 15, 2020. Said amount shall be reduced to Judgment against Father, and in favor of  
19 Mother, and interest shall continue to accrue on any unpaid amount at a rate of 10% per annum,  
20 commencing March 16, 2020.  
21

22 **D. ATTORNEY'S FEES AND COSTS:**

23 1. Each party shall be responsible for paying his/her own respective attorney's fees  
24 and costs.  
25

26 **E. INACTIVE CALENDAR:**

2. The parties respectfully request that the Court place this matter on the inactive calendar for 60 days from the date of entry of this Stipulated Order so that the parties may finalize and enter into an updated Parenting Plan and, upon entry of the same, a Stipulation of Dismissal.

**F. FINAL APPEALABLE ORDER:**

1. Pursuant to Rule 78, *Arizona Rules of Family Law Procedure*, this final Judgment/Decree is settled, approved and signed by the Court and shall be entered by the Clerk of the Maricopa County Superior Court.

DATED this 9 day of February, 2020.

*Michael Mandell*  
The Honorable Michael Mandell  
JUDGE OF THE SUPERIOR COURT

**APPROVED AS TO FORM AND CONTENT BY:**

**SIGNATURE BY PETITIONER/MOTHER:**

Everything stated by me in this document is true and correct to the best of my knowledge, information and belief, and I approve this Stipulated Order as to form and content.


1-31-2020  
Dated

Kathleen Marie Guthrie  
KATHLEEN MARIE GUTHRIE  
Petitioner/Mother

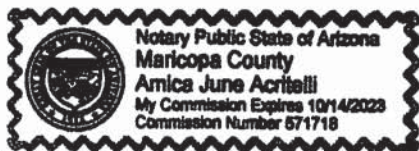


1 STATE OF ARIZONA )  
2 )ss.  
3 County of Maricopa )

4 On this 31<sup>st</sup> day of January, 2020, before me, the undersigned Notary Public,  
5 personally appeared, known to me, or satisfactorily proven, to be the person whose name is  
6 subscribed to the foregoing instrument as "Mother," and who acknowledged to me that she  
7 executed the same for the purposes contained therein.

8   
9 Notary Public

10 My Commission Expires:



12 SIGNATURE BY RESPONDENT/FATHER:

13 Everything stated by me in this document is true and correct to the best of my knowledge,  
14 information and belief, and I approve this Stipulated Order as to form and content.

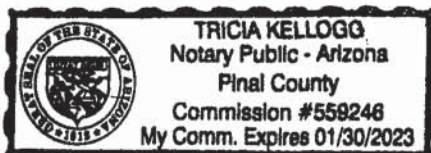
15  
16 1/28/2020  
17 Dated

18 

19 SHAWN ALLEN BALL  
20 Respondent/Father

21 STATE OF ARIZONA )  
22 )ss.  
23 County of Maricopa )

24 On this 28<sup>th</sup> day of January, 2020, before me, the undersigned Notary Public,  
25 personally appeared, known to me, or satisfactorily proven, to be the person whose name is  
26 subscribed to the foregoing instrument as "Father," and who acknowledged to me that he  
27 executed the same for the purposes contained therein.



29   
30 Notary Public

1 My Commission Expires:  
2

3 **APPROVED AS TO FORM ONLY BY:**  
4

5 **ROSE LAW GROUP pc**  
6

7   
8 \_\_\_\_\_  
9 Audra E. Petrolle  
Attorney for Petitioner/Mother



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480-539-9400  
[paul@riggslaw.com](mailto:paul@riggslaw.com)

Attorneys for Respondent/Appellant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

In Re the Matter of:

KATHLEEN MARIE BALL,

*Petitioner,*

and

SHAWN ALLEN BALL,

*Respondent.*

No. FC 2017-096436

**EXPEDITED MOTION TO STAY**

**(Expedited Consideration Requested)**

(Hon. Michael Mandell)

**INTRODUCTION**

Respondent Shawn Ball (“Father”) respectfully moves for an expedited order to stay pending appeal of the Court’s October 4, 2019 Minute Entry (“Order”), which enjoins him from taking his children to church with him or sharing with them his religious beliefs. Father has appealed the Order, but in the meantime, the Parties recently agreed to a modification of parenting time, under which Father will now regularly have the children (every other weekend) during the time of Father’s church services. Because Father is now regularly forced to give up his religious beliefs and practices vis-à-vis his children in order

1 to comply with the Court’s Order, an expedited stay pending the outcome of the appeal  
2 is warranted.

3 The Order arose from Petitioner Marie Ball (“Mother”)’s contention that the  
4 parties’ Parenting Plan prohibits Father—a post-divorce convert to the Church of Jesus  
5 Christ of Latter-day Saints (“Church of Jesus Christ”)—from taking the parties’ teenage  
6 children to his new church on the rare Sundays when he had the children. The plain  
7 language of the Parenting Plan allows each parent to take the children “to a church or  
8 place of worship of [the parent’s] own choice,” while a separate provision states that the  
9 children “may be instructed in the Christian faith.”

10 Claiming that the “parent’s choice” provision doesn’t really mean what it says, and  
11 that the permissive “may” provision is actually mandatory and exclusive, Mother then  
12 argued that the Church of Jesus Christ is not a Christian faith and thus Father violated the  
13 Parenting Plan by taking his children to that church. Following a hearing in which the  
14 Court took “expert” testimony from Mother’s pastor on “what is or is not within the  
15 definition of Christianity,” the Court concluded that the Church of Jesus Christ “does not  
16 fall within the confines of the Christian faith,” and thus enjoined Father from exposing  
17 his children to the Church of Jesus Christ or otherwise sharing his religious beliefs and  
18 convictions with them.

19 An expedited stay is warranted because Father has a strong likelihood of success  
20 on the merits, as neither this Court—nor *any* court or other arm of the civil government—  
21 possesses authority to make a legal determination on the fundamentally religious question  
22 of what is or is not “Christianity,” and cannot construe the phrase “instructed in the  
23 Christian Faith” without unconstitutionally entangling itself in religious questions.  
24 Likewise, a legal prohibition on Father’s ability to share his religious beliefs with his  
25 children imposes irreparable harm on Father—harm that will now be frequently inflicted  
26 as a result of the recent increase in Father’s weekend parenting time. Father’s irreparable  
27 harm outweighs any harm to Mother, who in fact is not harmed at all, and remains at  
28 liberty to take the children to her church of choice during her parenting time, and to

1 instruct them in her religious beliefs. And finally, the strong, public-policy interest in  
2 upholding First Amendment principles favors granting the stay.

### 3 BACKGROUND

4 **The Divorce and Parenting Plan:** The parties divorced in 2018. Upon  
5 dissolution of their marriage, they filed a Parenting Plan to address legal decision making  
6 and care of their teenage daughter and son. Under the original plan, Father had parenting  
7 time each week from Sunday afternoon until Friday morning, with Mother having  
8 parenting time Friday through Sunday. Regarding the children's religious education, the  
9 parents checked boxes, agreeing that (1) "[e]ach parent may take the minor children to a  
10 church or place of worship of his or her choice" and (2) "the minor children may be  
11 instructed in the Christian faith."

#### 12 H. RELIGIOUS EDUCATION ARRANGEMENTS: (Choose ONE)

13 ☒ 14 Each parent may take the minor children to a church or place of worship of his or her choice during  
the time that the minor children is/are in his or her care.

15 ☒ 16 Both parents agree that the minor children may be instructed in the Christian faith.

17 ☐ 18 Both parents agree that religious arrangements are not applicable to this plan.

19 Parenting Plan for Joint Legal Decision Making 5, FC2017-096436, Mar. 12, 2018  
20 ("Parenting Plan," attached as **Exhibit A.**) Notably, the Parenting Plan does not define  
21 or specify the contours of the term "Christian faith." For example, the provision does not  
22 specify "the evangelical version of the Christian faith," or "the Lutheran version of the  
23 Christian faith," or "the Protestant version of the Christian faith," or "the Catholic version  
24 of the Christian faith," etc. Nor does the Parenting Plan prohibit the children from being  
25 instructed in other faiths.

26 **Father's Conversion to the Church of Jesus Christ:** Following the parties'  
27 divorce, Father joined the Church of Jesus Christ, and the children on occasion  
28 accompanied him there when Mother would swap her Sunday time. But after Mother

1 learned about these visits to what she called the “Mormon” church,<sup>1</sup> she sued for violation  
2 of the Parenting Plan, claiming “Mormons” are not “Christians.” Petitioner/Mother’s  
3 Separate Prehearing Statement 12-14, July 3, 2019.

4 **Mother’s Petition:** The Court first addressed Mother’s petition at a July hearing.  
5 (Tr. of Proceedings, No. AZMCPV-06097, July 10, 2019, attached as **Exhibit B.**) There,  
6 the Court acknowledged it was not “qualified” to “get into what is the definition of  
7 Christianity.” *Id.* at 29:4-9; *see also id.* at 35:18-24 (“I’m certainly not qualified to answer  
8 that question.”). The Court further observed that the Parenting Plan states only that the  
9 children “may” be instructed in the Christian faith, and that “unless [Mother was] arguing  
10 that ‘may’ really should mean ‘shall,’” the parties were “sort of stuck with the words that  
11 were included.” *Id.* at 29:18-24. Ultimately, however, the Court stated that it had not  
12 “scheduled to really address this issue today” and instead set a time in September for what  
13 the Court anticipated would be “a battle of the religious experts.” *Id.* at 43:11-20, 44:10-  
14 17, 54:2-5.

15 **The Issue: What is Christianity?** At the September hearing, the Court  
16 announced that the hearing’s purpose was to determine “what is or is not within the  
17 definition of Christianity.” (Tr. of Proceedings 5:20-24, No. FC2017-096436, Sept. 16,  
18 2019, attached as **Exhibit C.**) Mother was represented by counsel; Father was unable to  
19 afford counsel and appeared *pro se*. *Id.* at 4.

20 **Mother’s Testimony:** Mother testified that the parties checked “both boxes” on  
21 the Parenting Plan related to religious upbringing because—at the time—they “didn’t  
22 really care which church. . . . as long as it was a Christian faith.” *Id.* at 18:20-24. After  
23 learning that the children “were attending the Mormon church,”<sup>2</sup> she objected because  
24 she claimed that “Mormonism was not anywhere close to what we had intended.” *Id.* at

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25 <sup>1</sup> The Church of Jesus Christ of Latter-day Saints considers “Mormonism” to be an  
26 inaccurate descriptor and prefers it not be used. <https://perma.cc/DKG6-PWXT>. “When  
27 a shortened reference is needed, the terms ‘the Church’ or ‘the Church of Jesus Christ’  
are encouraged.” *Id.*

28 <sup>2</sup> At no time in the hearing did Mother, or her “expert” ever refer to the Church of  
Jesus Christ by its correct name.

21:11-12. She alleged that both children wanted “to attend Grace” (her church) and that it was confusing to them “to be trained in both religions.” *Id.* at 23:11-15.

**Testimony of Mother’s Expert:** Mother called Josh Girgenti, the Student Ministries Director at her church, to provide purportedly expert testimony on the issue. Mr. Girgenti holds a Master of Arts in Ministry and claimed to know about “both the Mormon faith and the Protestant faith” from personal experience because his father was a Protestant and his mother was a “practicing Mormon ... up until about two years ago.” *Id.* at 7:21-8:7. Mr. Girgenti argued that:

- “Christianity” and “the gospel of Mormonism” differ on “what is salvation.” *Id.* at 9:10-15. For “Christians,” he testified, “[t]he only way” to salvation is “through Jesus.” *Id.* at 10:8-10. Beyond believing in Jesus, he said, “Mormons” also require “obedience to the LDS teachings” *Id.* at 10:13-18.
- “Christianity” and “Mormonism” have completely different messages regarding the Trinity. *Id.* at 11:1-12:15. “Christians,” according to Mr. Girgenti, recognize the Trinity as “three separate persons,” but one entity. *Id.* at 12:13-16. He analogized to water as “a solid, a liquid, and a gas”— “[t]hree different states but the same thing.” *Id.* at 12:16-17. In contrast, “Mormons,” according to Mr. Girgenti, recognize the Trinity as “three separate entities” such as “a dinner: a chicken, a vegetable, and a drink”— “[t]hree separate things.” *Id.* at 12:12-13, 18-20.
- While “Christians” and “Mormons” both use the Bible, “Mormons” also have additional scripture in the Book of Mormon, Doctrine and Covenants, and Pearl of Great Price. *Id.* at 14:3-8, 13:9-14.
- “[T]he founder of Mormonism” was Joseph Smith, while the “founder of Christianity” was Jesus Christ. *Id.* at 14:13-17.

Noting the “many different sects of Christianity” the Court inquired what “sort of extrinsic evidence” exists that “delineates what is Christianity.” *Id.* at 15:10-16:5. Mr. Girgenti then responded that “[t]he word Christian ... interprets as Christ follower” and that “anybody who believes in Jesus, a personal relationship with him, follows him, obeys his teaching, and holds fast to what his word says, would essentially be considered a Christ follower.” *Id.* at 16:1-13.

1       **Father’s Testimony:** Father testified as follows regarding his Christian faith as a  
2 member of the Church of Jesus Christ:

- 3       · “I’m professing to be of the Christian faith in that Jesus Christ is the  
4 center point of my faith.” *Id.* at 35:8-9.
- 5       · “I am not only a Christian, but more of a practicing follower of Jesus  
6 Christ than ever before in my entire life.” *Id.* at 35:9-11.
- 7       · “My church bears [H]is name and always emphasizes we should feast  
8 on the words of Christ.” *Id.* at 35:11-13.
- 9       · “I love God with all my heart, mind, and might. I love my [S]avior who  
10 is Jesus Christ. I have not drifted from worshipping my Creator through  
11 Jesus Christ. And I plan to teach my children all that it means by taking  
them to church and discussing the gospel inside my home.” *Id.* at 35:24-  
36:3.

12       **The Order:** The Court took the matter under advisement, *id.* at 44, and issued an  
13 order a few weeks later in Mother’s favor. (Min. Entry, Oct. 4, 2019, attached as **Exhibit**  
14 **D.**) The Order concluded that “both parties agreed that each parent could take the Children  
15 to a church or place of worship of their choice” and that “the Children would be instructed  
16 in the Christian faith.” *Id.* at 1. The Court noted that it had “heard from a religious expert  
17 on the differences between “Christianity” and “Mormonism,” but then stated—despite  
18 Father’s own testimony of his Christian faith—that “Father provided no evidence to the  
19 Court on this issue.” *Id.* at 2. The Court then concluded that “Mormonism is a separate  
20 and distinct religion from Christianity with substantially different teachings.” *Id.*  
21 Accordingly, it held that “Mormonism does not fall within the confines of Christian faith”  
22 and that “instructing the children in [Mormonism]” thus “violates the Parenting Plan.” *Id.*  
23 The Court then ordered that “the Children shall only be instructed in the Christian faith,  
24 which does not include Mormonism.” *Id.* Father’s appeal is pending.

25       **The February 2020 Modification of Parenting Time:** On February 4, 2020, the  
26 Court signed the parties’ Stipulated Order Re: Modification of Parenting Time, which  
27 modified the Parenting Plan to create “regular access, equal parenting time on a week  
28 on/week off basis.” (Stipulated Order at 5, attached as **Exhibit E.**) Under the revised

1 Parenting Plan, Father now has regular weekend time with the children (every other  
2 weekend). In light of this modification, the Court’s October 4, 2019 Order, enjoining  
3 Father from taking the children to his church, significantly interferes with: his ability to  
4 participate in the religious upbringing of his children; his ability to spend time with his  
5 children; and with his own religious exercise. Father thus seeks a stay of the Court’s order  
6 pending final resolution of the appeal.

### 7 STANDARD

8 Stays pending appeal are governed by Rule 87(c) of the Rules of Family Law  
9 Procedure. Under Rule 87, a court may “issue a stay that postpones the *effect*” of an order  
10 pending appeal. *Corbin v. Tolleson*, 152 Ariz. 376, 378 (Ariz. Ct. App. 1986) (citing Ariz.  
11 R. Civ. P. 62(c), now numbered 62(e)); *see also* Ariz. R. Fam. Law P. 1(c) (adopting  
12 “case law interpreting the language of [parallel] civil rules”). “[T]he decision to stay the  
13 execution of a judgment pending appeal is discretionary.” *Tri City Nat’l. Bank v. Barth*,  
14 237 Ariz. 90, 92 (Ariz. Ct. App. 2015). The party seeking the stay must show: “(1) a  
15 strong likelihood of success on the merits; (2) irreparable harm if the stay is not granted;  
16 (3) that the harm to the requesting party outweighs the harm to the party opposing the  
17 stay; and (4) that public policy favors the granting of the stay.” *See Smith v. Ariz. Citizens*  
18 *Clean Elections Comm’n*, 212 Ariz. 407, 410 (Ariz. 2006).

### 19 ARGUMENT

20 All four “stay” factors weigh overwhelmingly in Father’s favor. Father is highly  
21 likely to succeed on the merits of his appeal because courts lack authority to answer  
22 ecclesiastical questions such as whether the Church of Jesus Christ is a Christian religion  
23 or what is required for children to “be instructed” in the “Christian” faith. Moreover, the  
24 Court has already acknowledged that the parties’ Parenting Plan itself states only that the  
25 children “*may*” be instructed in the Christian faith, while expressly allowing each parent  
26 to “take the minor children to a church or place of worship of his or her own choice.” (Ex.  
27 D at 5.) Thus, there was no proper basis for the Court’s order. The resulting violation of  
28 Father’s rights constitutes irreparable harm as a matter of law—particularly in light of the

1 modified parenting-time schedule—with no countervailing interests on part of Mother or  
2 the public generally that could outweigh that harm. Rather, all interested parties benefit  
3 when courts uphold constitutional rights. To this end, the Court should grant a stay to  
4 preserve the pre-Order status quo, allowing Father to take his children to church and share  
5 his religious beliefs with them pending resolution of his appeal.

6 **I. Father Is Highly Likely to Succeed on the Merits of His Appeal.**

7 The Court erred as a matter of law in making an ecclesiastical determination  
8 regarding what religious beliefs fall within the Christian faith. Such religious questions  
9 are non-justiciable and outside the jurisdiction of the courts or other arms of the  
10 government; rather, such religious questions are reserved by the First Amendment for  
11 people to resolve for themselves. Moreover, the plain language of the Parenting Plan  
12 (“*may* instruct”) is permissive in nature with regard to affirmative instruction and, at most,  
13 reflects an agreement that neither party will *object* to Christian instruction. By construing  
14 the permissive “may” provision as mandatory, the Order in this case was not only  
15 inconsistent with the plain language of the Parenting Plan, but more fundamentally  
16 entangled the Court in religious questions in violation of Father’s First Amendment and  
17 other religious liberty rights.

18 **A. The Court erred by deciding the non-justiciable question: What does it mean**  
19 **to be Christian?**

20 The First Amendment requires courts to “abstain from deciding” “ecclesiastical  
21 matters.” *Ad Hoc Comm. of Parishioners of Our Lady of Sun Catholic Church, Inc. v.*  
22 *Reiss*, 223 Ariz. 505, 510 (Ariz. Ct. App. 2010) (citations omitted). Among other things,  
23 ecclesiastical matters include “theological controvers[ies].” *Id.* (quoting *Watson v. Jones*,  
24 80 U.S. 679, 733 (1871)). Thus, for example, as early as 1888, one state court held that  
25 “[n]o power save that of the church can rightfully declare who is a Catholic.” *Dwenger v.*  
26 *Geary*, 14 N.E. 903, 908 (Ind. 1888). Another has recognized that no court may determine  
27 “when a child may be deemed a Jew.” *Zummo v. Zummo*, 574 A.2d 1130, 1149 (Pa. Super.  
28 Ct. 1990). And the United States Supreme Court has held that Courts cannot determine



1 whether a church has “depart[ed] substantially from [governing] doctrine,” *Presbyterian*  
2 *Church v. Mary Elizabeth Blue Hull Mem’l Presbyterian Church*, 393 U.S. 440, 450  
3 (1969), or whether members have conformed “to the standard of morals required of them.”  
4 *Watson*, 80 U.S. at 733.

5 Courts “exercise no jurisdiction” over such matters, *id.* at 733, because there are  
6 no “purely secular terms” on which fundamentally religious questions could be decided.  
7 *Jones v. Wolf*, 443 U.S. 595, 604 (1979). In this case, for example, questions like those  
8 posed by Mother’s expert about what is required for Christian salvation, whether the  
9 Trinity is more like “water” or “dinner,” whether the Bible is the only word of God, or  
10 whether Joseph Smith was a Christian prophet are all questions inherently bound up in  
11 faith and transcendence—issues that cannot in any meaningful way be resolved by the  
12 tools of evidence that define the judicial process. Courts simply may not resolve disputes  
13 that involve “doctrinal matters.” *Id.* at 602 (citation omitted); *see also Hackett v. Hackett*,  
14 150 N.E.2d 431, 434 (Ohio Ct. App. 1958) (“[T]he provisions of the Separation  
15 Agreement, dealing with the promise of the mother to see to it that the daughter ... be  
16 reared in the Catholic faith ... cannot be enforced by judicial decree.”). And by  
17 concluding that Mother’s church is “Christian,” but that Father’s—despite its claiming to  
18 be—is not, the Court violated “[t]he clearest command of the Establishment Clause” that  
19 “one religious denomination cannot be officially preferred over another.” *Larson v.*  
20 *Valente*, 456 U.S. 228, 244 (1982); *see also Niehaus v. Huppenthal*, 233 Ariz. 195, 198  
21 (Ariz. Ct. App. 2013) (stating that interpretation of Arizona’s Religion Clause is  
22 “‘virtually indistinguishable’ from ... the federal Establishment Clause”).

23 Instead, the Court should have recognized “the constitutional prerequisite of  
24 ‘benign neutrality’ towards *both* parent’s religious viewpoints” and acknowledged that  
25 the definition of true Christianity is non-justiciable and outside the Court’s purview.  
26 *Zummo*, 574 A.2d at 1157 (emphasis in original); *see also Employment Division v. Smith*,  
27 494 U.S. 872, 877 (1990) (government cannot “lend its power to one or the other side in  
28

controversies over religious authority or dogma”); *Milivojevich*, 426 U.S. at 713 (“[R]eligious controversies are not the proper subject of civil court inquiry.”).

**B. The Parenting Plan itself supports Father’s actions on the merits.**

In addition to its facial constitutional infirmities, the Order cannot be squared with the plain terms of the Parenting Plan for two reasons. First, the Plan expressly allows Father to take the children to “the church or place of worship of his ... choice,” and then permits—but does not mandate—that the children “may” be “instructed” as Christians. Second, even if “may” meant “shall” (it doesn’t), and even if the meaning of “Christian” could be resolved by a Court (it can’t), the Parenting Plan still could not be enforced because a requirement to “be instructed in [a] faith” cannot be enforced without unconstitutionally entangling the Court in religious questions.

**1. The plain terms of the Parenting Plan permit Father to take his children to the church of his choice.**

Like any other written agreement, a Parenting Plan should be construed according to its plain meaning. The parties’ Parenting Plan includes two potentially relevant provisions. The first provision unambiguously affirms: “Each parent may take the minor children to a church or place of worship of his or her choice.” (Parenting Plan at 5.) This should have been dispositive in Father’s favor. The second provision—to the extent it places any restriction on the first—states only that the children “*may* be instructed in the Christian faith.” *Id.* (emphasis added). In other words, the parents agreed that each could take the children to the church of his/her choice, but that neither would *object* to Christian instruction. Nothing in either provision states or can be reasonably construed to suggest that instruction in the Christian faith is either mandatory or exclusive. *Democratic Party of Pima Cty. v. Ford*, 228 Ariz. 545, 548 (Ariz. Ct. App. 2012) (“Generally, the use of the word ‘may’ indicates permissive intent while ‘shall’ denotes a mandatory provision.”) (citation omitted); *see also Curtis v. Thomas*, No. 1 CA-CV 18-0587 FC, 2019 WL 2762333, at \*2 (Ariz. Ct. App. July 2, 2019) (memorandum decision) (applying the “ordinary meaning of ‘may’” to the interpretation of a divorce decree).

1 At the July Temporary Orders Hearing, the Court purported to treat the Parenting  
2 Plan like a contract, (Ex. B at 21), and advised Mother’s counsel that the parties were  
3 “sort of stuck with the words included there,” (*id.* at 29), but ultimately failed to give  
4 effect to the permissive nature of “may.” Yet the plain meaning of the word is apparent,  
5 especially when read in context of the entire Parenting Plan. No other provision in the  
6 Parenting Plan uses the permissive word “may”; rather, all others use the mandatory terms  
7 “will” or “shall.” For example, concerning education arrangements, the Plan states that  
8 the parties “*will* make major educational decisions together.” (Ex. A, at 5 (emphasis  
9 added).) Where a legal document “uses both permissive and mandatory terms,” courts  
10 should presume that the parties were “aware of the difference and intended each word to  
11 carry its ordinary meaning.” *Democratic Party of Pima Cty.*, 228 Ariz. at 548; *Curtis*,  
12 2019 WL 2762333, at \*2. Because the parties used “may” not “shall” regarding the  
13 religious upbringing of their children, the Court should have given effect to the flexibility  
14 agreed on that the children “may” be instructed in the Christian faith, but are not precluded  
15 from receiving instruction in what one parent or the other may consider outside the  
16 Christian faith.

17 **2. Reading “may” as “shall” renders the religious instruction provision**  
18 **unenforceable.**

19 Even if the Parenting Plan could be construed to require that the children “shall be  
20 instructed” in a particular version of the Christian faith, that provision would be  
21 unenforceable, because a court cannot determine what it means to “be instructed” in a  
22 faith without unconstitutionally entangling itself in religious questions. For example:  
23 Would being “instructed” require weekly attendance at church? Enrollment in a religious  
24 school? Participation in religious youth activities? Regular home instruction? If so, how  
25 regular? Would both parents have to participate? Or would it be enough that one parent  
26 has an opportunity to instruct? What is the permissible curriculum for such instruction?  
27 What if parents disagree about the curriculum? And does instructing children in one faith  
28 prohibit them from attending another’s services, or even discussing another’s beliefs with

1 a parent? Such questions demonstrate that compliance with the hypothesized “*shall* be  
2 instructed” provision is impossible to determine without entangling the Court in  
3 inherently religious questions regarding what it means to be “instructed” in a particular  
4 faith.

5 For this reason, courts have consistently found similar provisions to be  
6 unenforceable. For example, in *Victor v. Victor*, the court found that a clause in an  
7 antenuptial agreement instructing the parties to “comply with the ‘laws of Moses and  
8 Israel’” was unenforceable. 177 Ariz. 231, 234 (Ariz. Ct. App. 1993). “Such a vague  
9 provision has no specific terms describing a mutual understanding” of what meets the  
10 standard. *Id.* Similarly, in *Zummo v. Zummo*, the court refused to enforce an agreement  
11 that the children would be “raised as Jews,” noting that “[b]oth the subject matter and the  
12 ambiguities of the order make excessive entanglement in religious matters inevitable.”  
13 574 A.2d 1130, 1145, 1146 (Super. Ct. Penn. 1990). And in *Lynch v. Uhlenhopp*, the  
14 court refused to enforce a divorce decree that required the parties’ children to be “reared  
15 in the Roman Catholic Religion,” noting that experts from the same church might easily  
16 disagree on what “would meet the test of rearing the child in conformity with the various  
17 forms of worship of the church.” 78 N.W.2d 491, 497-98 (Iowa 1956).

18 So too here. Without more specific language in an agreement, what it means to be  
19 *instructed* in the Christian faith cannot be assessed without religious entanglement any  
20 more than what it means to *be* Christian, because what it means to be instructed in any  
21 faith, is an inherently religious question. Civil courts simply cannot resolve “disputes that  
22 would require interpreting religious doctrine or practice” or determine what is sufficient  
23 when it comes to religious instruction. *Rashedi v. Gen. Bd. of Church of the Nazarene*,  
24 203 Ariz. 320, 323-324 (Ariz. Ct. App. 2003) (citations omitted); *Dobrota v. Free Serbian*  
25 *Orthodox Church St. Nicholas*, 191 Ariz. 120, 126 (Ct. App. 1998), *as amended* (Feb. 10,  
26 1998). (“[D]isputes . . . cannot be heard by a civil court if the court must resolve  
27 underlying controversies over religious doctrine and practice.”).

1 Reading “shall” for “may” into the Parenting Plan forces the Court into a thicket  
2 of constitutional and religious questions that it need not—and constitutionally cannot—  
3 enter.

## 4 **II. The Remaining Factors Support a Stay.**

### 5 **A. Father has already suffered—an continues to suffer—irreparable harm.**

6 Father is already in the position of having to choose between fulfilling his religious  
7 obligations and spending time with his children—and he faces fines if he takes his  
8 children to church or shares with them his religious beliefs. That is irreparable harm as a  
9 matter of First Amendment law. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss  
10 of First Amendment freedoms, for even minimal periods of time, unquestionably  
11 constitutes irreparable injury.”); *Shoen v. Shoen*, 167 Ariz. 58, 63 (Ariz. Ct. App. 1990)  
12 (irreparable injury is harm “not remediable by damages”). Additionally, the Order’s  
13 prohibition irreparably deprives Father of his fundamental “right to direct the upbringing  
14 of [his] minor child[ren]” and “right to direct the moral and religious training of [his]  
15 minor child[ren].” A.R.S. § 1-602(A)(4) (noting that these and other parental rights  
16 contained in Arizona’s “Parents’ Bill of Rights” “are reserved to a parent of a minor child  
17 without obstruction or interference from this state, [or] ... any other governmental entity”).  
18 Moreover, the new Stipulated Order Re: Modification of Parenting Time, under which  
19 Father now has equal parenting time on weekends, will only heighten the irreparable harm  
20 he is presently enduring. Because Father has demonstrated that his constitutional and civil  
21 rights are being violated, the “irreparable harm” factor weighs in his favor. *See Berry v.*  
22 *Foster*, 180 Ariz. 233, 236 (Ariz. Ct. App. 1994); *Doe v. Harris*, 772 F.3d 563, 583 (9th  
23 Cir. 2014) (“[T]he loss of First Amendment freedoms, for even minimal periods of time,  
24 unquestionably constitutes irreparable injury.”) (citation omitted).

### 25 **B. The balance of harms weighs in Father’s favor.**

26 Mother will suffer no injury from a stay. She remains free to instruct her children  
27 according to her understanding of what it means to be “Christian.” This is consistent with  
28 what she agreed to in the Parenting Plan. Moreover, the protection of Father’s rights

1 serves equally to protect Mother's rights to take the children to the church of her choice  
2 during her parenting time, and to share with them her religious beliefs as she sees fit. By  
3 contrast, if the Order is not stayed, Father will continue to suffer irreparable and severe  
4 injury as he continues to be penalized because of his religious conversion. This factor  
5 thus also weighs in Father's favor.

6 **C. The public interest favors a stay.**

7 The public interest also strongly favors granting a stay. Indeed, "[c]ourts . . . have  
8 consistently recognized the significant public interest in upholding First Amendment  
9 principles." *Associated Press v. Otter*, 682 F.3d 821, 826 (9th Cir. 2012) (citation omitted).  
10 A stay will best preserve and promote the principle that government should not become  
11 entangled in questions such as what it means to be a Christian or to be instructed in the  
12 Christian faith.

13 **CONCLUSION**

14 For all the foregoing reasons, this Court should stay its October 4, 2019 Order to  
15 preserve the status quo and allow Father—pending resolution of his appeal—to take his  
16 children with him to church and to share with them his religious beliefs.

17 Dated this 25th day of February 2020.

18 OSBORN MALEDON, P.A.

19  
20 /s/ David D. Garner

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27  
28

1 Electronically filed and a copy e-delivered  
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4 Maricopa County Superior Court

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11 /s/ Patricia D. Palmer  
12 8384512

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN RE THE MARRIAGE OF KATHLEEN  
MARIE BALL,

No. AZMCPV-06097

Petitioner,

and

SHAWN A. BALL,

Respondent.

Mesa, Arizona  
July 10, 2019  
9:06 a.m.

BEFORE THE HONORABLE MICHAEL MANDELL

TRANSCRIPT OF PROCEEDINGS

Temporary Orders Hearing

Proceedings recorded by electronic sound recording; transcript  
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KG000105  
**APP071**



I N D E XJuly 10, 2019

<u>PETITIONER'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VD</u>
Kathleen Guthrie	6	--	--	--	--

<u>RESPONDENT'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VD</u>
None					

M I S C E L L A N E O U SPAGE

Court's Orders

54



EXHIBITSPETITIONER'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
20	March 29, 2018, email	8	8
23	Parenting Plan	6	7

RESPONDENT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
None			



APPEARANCESJuly 10, 2019

Judge: Michael Mandell

For the Petitioner:

Audra Elizabeth Petrolle

Witnesses:

Kathleen Guthrie

For the Respondent:

Steven N. Cole

Witnesses:

None



Mesa, Arizona

July 10, 2019

(The Honorable Michael Mandell Presiding)

TEMPORARY ORDERS HEARING:

THE CLERK: All rise.

THE COURT: Please be seated. This is FC2017-096436, the matter of Katherine (sic) and Shawn Ball. If the counsel would like to introduce themselves and their clients, please?

MS. PETROLLE: Your Honor, Audra Petrolle from Rose Law Group on behalf of Petitioner Kathleen Ball, now known as Kathleen Guthrie.

MR. COLE: Good morning, Your Honor. Steven Cole on behalf of Mr. Ball, who is present.

THE COURT: Thank you. All right. We're here on a petition for temporary orders. I know there was a few other things, but it's mostly on the temporary orders matter. So let's at least get through that and then we can figure out some of the other issues as well. Are there any preliminary matters that we need to address before we begin?

MR. COLE: Not that I can think of, Your Honor.

MS. PETROLLE: Not that I'm aware.

THE COURT: All right. Then Counsel, when you're ready.

MS. PETROLLE: Okay. Your Honor, I'd like to call Kathleen Ball to the stand. Your Honor, may I give her the



1 and then we could have the remainder decided.

2 THE COURT: Right. But I mean, the parenting plan is  
3 basically an agreement. It's a contract.

4 MS. PETROLLE: Oh, I'm sorry.

5 THE COURT: And so --

6 MS. PETROLLE: I mean, the only --

7 THE COURT: -- I'm trying -- I'm trying to understand

8 MS. PETROLLE: -- the only --

9 THE COURT: -- where the agreement was.

10 MS. PETROLLE: There's no real agreement on summer  
11 other than in the parenting plan on page 3.

12 THE COURT: Right. So if there's no plan --

13 MS. PETROLLE: Right.

14 THE COURT: -- it defaults back to the normal plan?

15 MS. PETROLLE: The regular access?

16 THE COURT: Yes.

17 MS. PETROLLE: That's not how either of us have been  
18 treating it.

19 THE COURT: Okay. So how have you been treating it?

20 MS. PETROLLE: We've just been negotiating the time  
21 and the weeks because it doesn't seem fair or equitable to go  
22 to the regular access when Mother has such a significant --  
23 Mother has such a reduction in parenting time already.

24 THE COURT: That she agreed to.

25 MS. PETROLLE: Well --



1 MS. PETROLLE: Yes.

2 THE COURT: -- so we've got writings that show what  
3 the parties were thinking at the time?

4 MR. COLE: I think that we're going to have to get  
5 into what is the definition of Christianity.

6 THE WITNESS: No.

7 MS. PETROLLE: Well, that's --

8 MR. COLE: I'm definitely qualified on that.

9 THE COURT: Well, nor am I.

10 MS. PETROLLE: I don't know that I'm qualified.

11 MR. COLE: I have no idea --

12 MS. PETROLLE: We have an exhibit --

13 MR. COLE: -- it is.

14 MS. PETROLLE: -- from the pastor of the mutually  
15 agreed-upon church.

16 THE COURT: Right.

17 MS. PETROLLE: I mean --

18 THE COURT: Because here's -- I mean, you know, well  
19 I'll just tell you at least my reading of it is basically, you  
20 know, I look at the words that were used. And I know that this  
21 was a form document, so you're sort of stuck with the words  
22 that were included in there. But it -- I mean, it uses the  
23 words "may", and unless you're arguing that "may" really should  
24 mean "shall" --

25 MS. PETROLLE: Well, in part that is the argument in





1 Christian, we were not including that as part of that. That's  
2 basically my understanding. That's what we both understood.

3 And it even states in his email that he believed a  
4 certain way up until he started researching and finding out.  
5 So it's not that I have something against the Mormon religion,  
6 it just goes against what we had agreed upon when we wrote this  
7 document and we had no open discussion of that. And the minute  
8 I tried to open discussion sending the email to the church the  
9 children went to, I then got blocked, I got yelled at, I got  
10 called names.

11 And once I said I don't agree with this, can we seek  
12 counsel, he closed down that discussion, which for the last  
13 year and a half before that it was always an open discussion.  
14 Any church that we wanted to take the kids to we informed the  
15 other one, we let them know what this church was about, we made  
16 sure that we were okay because that was our intent when we  
17 wrote this document.

18 MR. COLE: I thought all these other religions were  
19 Christian also. Am I wrong about that or --

20 THE WITNESS: It's --

21 MR. COLE: I don't know.

22 THE WITNESS: I have a lot of documents --

23 THE COURT: I'm certainly -- I'm certainly not  
24 qualified to answer that question.

25 THE WITNESS: I'm not either, Your Honor.



1 Father makes an admission there's a material distinction. Ian  
2 Roth says Mormonism is not a form or denomination of  
3 Christianity, and actually speaks clearly that the Bible of  
4 Christianity is incomplete and inaccurate. So it's not just  
5 that there's some material distinction, there are religious  
6 officials who say it is not a form or a denomination of  
7 Christianity. Now, I'm sure there's debate, but they didn't  
8 contemplate that debate at the time they entered the agreement  
9 because they didn't contemplate Mormonism because they never  
10 practiced it.

11 THE COURT: So here's what happens, right?  
12 Because -- I mean, we weren't scheduled to really address this  
13 issue today, but here's what happens when I schedule the  
14 hearing, right. Your guy shows up and says -- I mean, it's  
15 basically going to be a battle of the religious experts, right?  
16 Because somebody -- I'm sure, you know, Dad's going to go out  
17 and get a -- basically a minister of some sort, or clergyman, I  
18 guess is probably the better term, that is going to say the  
19 exact opposite, and then I'm going to be stuck in the exact  
20 same spot where I am now.

21 MS. PETROLLE: The only difference is, Your Honor,  
22 that they had an established practice of consulting one another  
23 around churches and where they went, and Father failed to do  
24 that. He didn't honor their joint religious decision-making  
25 agreement.





1 THE WITNESS: Your Honor, if I may --

2 THE COURT: Given the wording in the document, I  
3 don't know that I can necessarily find that that's true.  
4 Because they did check the box that allows people -- that  
5 allows the parties to take them to the place of worship of  
6 their choice, limit -- and if I read them together, it'd be to  
7 the church of their choice within the Christian faith. And --

8 MS. PETROLLE: But then you're deciding automatically  
9 that Mormonism is Christianity, which puts us in the same --

10 THE COURT: Well, I'm not deciding that  
11 automatically, we'd have to have a hearing on it and I would  
12 have to try and make that determination with disputing experts  
13 that -- with one saying it is and one saying it's not, and the  
14 parties spending gobs more money if that's what you want to do.  
15 I mean, I hope these kids have college funds already all set up  
16 because you all are wasting it on attorneys if they don't, but  
17 hopefully they do.

18 THE RESPONDENT: That's a very good point.

19 THE WITNESS: Your Honor, can I state?

20 THE COURT: Yeah.

21 THE WITNESS: It really -- our intent was, and our  
22 practice was -- and there are plenty of witnesses, but just to  
23 bring -- did he ever consider Mormonism part of the Christian  
24 faith when we wrote this. And I can honestly say no, I did not  
25 and no, he did not. So that is what -- I'm just asking him to



1 going to Sunday school stuff.

2 THE COURT: So here's what we're going to do then.  
3 I'm going to hold a one-hour hearing on September 16th to  
4 address the petition for enforcement because we're not going to  
5 get it resolved today and sadly, you all can't work it out.

6 MS. PETROLLE: Your Honor, is that the entire  
7 petition for enforcement? Because it goes beyond the Mormon  
8 issue.

9 THE COURT: What else do we have?

10 MS. PETROLLE: There is Father allowing stepmother to  
11 give consent on behalf of the children for medical services  
12 improperly.

13 THE PETITIONER: Without notification.

14 MS. PETROLLE: Without notification. Father not  
15 following the parenting plan on communication rules,  
16 communicating co-parenting disputes directly through the  
17 children repeatedly; not advising Mother of certain school  
18 meetings.

19 MR. COLE: Your Honor, if I could, I think the  
20 parties should make a list of the issues because I'm not  
21 prepared to list every single --

22 THE PETITIONER: It's part of the documents that --

23 THE COURT: I assume it's all in the petition.

24 MS. PETROLLE: Yeah, it's in the petition.

25 MR. COLE: Yeah, okay.



1 it's up to you as to whether or not you all want to go down  
2 that road.

3 THE PETITIONER: Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 MR. COLE: Thank you, Your Honor.

6 THE RESPONDENT: Thank you, Your Honor.

7 (Proceedings concluded at 10:04 a.m.)

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## CERTIFICATE

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I, Alicia Young, a court-approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

/s/

ALICIA YOUNG  
Transcriber

August 13, 2019



IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

KATHLEEN MARIE BALL,

Petitioner,

vs.

SHAWN BALL,

Respondent.

No. FC2017-096436

Mesa, Arizona  
September 16, 2019  
10:01 a.m.

BEFORE THE HONORABLE MICHAEL MANDELL

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

Proceedings recorded by electronic sound recording; transcript  
produced by eScribers, LLC.

KAYLA GRIFFIN  
Transcriptionist



I N D E X

September 16, 2019

<u>PETITIONER'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VD</u>
Josh Girgenti	7, 17	--	--	--	--
Kathleen Guthrie	17	--	--	--	--

<u>RESPONDENT'S WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VD</u>
Shawn Ball	33	36	--	40,43	--



EXHIBITS

PETITIONER'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
3	Email exchange between Mother and Father 11/26/2018	22	22
12	Sports and orthopedic specialist medical records.	24	24
22	Parenting plan	18	18
27	Transcript of temporary orders hearing 7/10/2019	19	19
29	Mormon and Christian comparison chart.	8	8

RESPONDENT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
None			



APPEARANCESSeptember 16, 2019

Judge: Michael Mandell

For the Petitioner:

Audra E. Petrolle

Witnesses:

Josh Girgenti

For the Respondent:

Shawn Ball, Pro Se

Witnesses:

None





Mesa, Arizona

September 16, 2019

(The Honorable Michael Mandell Presiding)

EVIDENTIARY HEARING:

THE COURT: All right. This is FC2017-096436. The matter of Kathleen and Shawn Ball. Have the parties been sworn?

THE CLERK: Yes.

THE COURT: All right. Thank you. And Counsel, if you'd like to introduce yourself and your client.

MS. PETROLLE: Yes. Good morning, Your Honor. Audra Petrolle on behalf of Petitioner, Kathleen Ball, now known as Kathleen Guthrie (phonetic).

THE COURT: Thank you. And sir, if you'll state your name for the record please.

MR. BALL: Shawn Allen Ball.

THE COURT: Thank you. All right. And we're here today on a continuation on a petition to enforce that was filed back in May of 2019. I actually thought that you all would have resolved this. I didn't actually think we were going to have a hearing today on the issue of what is or is not within the definition of Christianity, but here we are. So I guess we will all get an education today on what is or what is not included within that definition.

With that, are there any preliminary matters that we



1 need to address before we begin?

2 MS. PETROLLE: I don't believe so.

3 THE COURT: Okay. Well, Counsel, this was your  
4 petition. Do either of you intend to call any witnesses today?

5 MS. PETROLLE: Yes, Your Honor.

6 THE COURT: All right. Mr. Ball, since you were --  
7 you don't have the benefit of counsel, there is a rule known as  
8 the rule of exclusion. It allows either of the parties to  
9 request that witnesses who are going to testify remain outside  
10 the courtroom until such time as their testimony is otherwise  
11 necessary and then they are allowed to come back in and stay  
12 for the proceedings.

13 Do either of the parties wish to invoke that Rule  
14 today?

15 MS. PETROLLE: No, Your Honor.

16 MR. BALL: No, Your Honor.

17 THE COURT: Okay. Then witnesses may remain in the  
18 courtroom.

19 Counsel, when you're ready.

20 MS. PETROLLE: Okay. Your Honor, I'd like to call  
21 Josh Girgenti to the stand, student ministries director of  
22 Grace Community Church.

23 JOSH GIRGENTI

24 called as a witness for the Petitioner, having been duly sworn,  
25 testified as follows:



1 MR. GIRGENTI: I do.

2 THE CLERK: Thank you, go ahead and have a seat.

3 THE COURT: Well, here you go, sir.

4 MS. PETROLLE: And if I may, I'd like to hand the  
5 witness the exhibits.

6 THE COURT: All right. Thank you.

7 THE WITNESS: Oh, awesome.

8 DIRECT EXAMINATION

9 BY MS. PETROLLE:

10 Q Good morning, Mr. Girgenti. Can you please state and  
11 spell your name for the record?

12 A Yep. Josh Girgenti.

13 Q Okay. And are you a graduate of Phoenix Seminary  
14 school?

15 A I am. Yep.

16 Q And do you hold a Master's (sic) of Arts in Ministry?

17 A I do. Yep.

18 Q And are you currently the student ministries director  
19 at Grace Community Church?

20 A Yes, ma'am.

21 Q All right. And growing up as a child -- just a  
22 little bit of your background -- were you exposed to both the  
23 Mormon faith and the Protestant faith?

24 A I was. Yes.

25 Q And is that because your mother was a practicing



1 Mormon and your father was a Protestant?

2 A Yeah. So my -- my history. My -- my parents,  
3 growing up, were actually both Christian. My mom converted to  
4 Mormonism about a year after my parents' divorce. I was 13  
5 years old when they divorced. So within a year, she converted  
6 to Mormonism and up until about two years ago was a practicing  
7 Mormon.

8 Q Okay. Could you please turn to Exhibit 29?

9 A All right.

10 Q Do you have it? Okay. Does this appear to be a true  
11 and accurate copy of the comparison chart between Mormonism and  
12 Christianity that you provided?

13 A Yeah.

14 MS. PETROLLE: Okay. Your Honor, I'd like to request  
15 admission of Exhibit Number 29.

16 THE COURT: Any objection to Exhibit 29?

17 MR. BALL: No, Your Honor.

18 THE COURT: 29 will be admitted.

19 (Petitioner's Exhibit 29 Received)

20 BY MS. PETROLLE:

21 Q Okay. Mr. Girgenti, in your experience, are  
22 Christianity and Mormonism fundamentally different, both  
23 doctrinally and in terms of the messages they spread to their  
24 followers?

25 A Absolutely. Essentially, if you were to break down



1 the differences between Mormonism and Christianity, you would  
2 essentially come down to two completely different messages.  
3 That central message is the message of the gospel, and  
4 according to the gospel of Jesus Christ -- according to  
5 Christianity -- that message is completely different from the  
6 message that Mormonism teaches and conveys.

7 Q And is there a fundamental difference between the  
8 doctrine of the trinity in Mormonism as compared with  
9 Christianity?

10 A Yeah, so -- real quick to -- to -- before we hit  
11 the -- the trinity, I think des -- describing what the gospel  
12 is is probably going to be central to this discussion since it  
13 is the key component. The gospel of Christianity versus the  
14 gospel of -- of Mormonism essentially breaks down into the --  
15 the conversation of what is salvation. Salvation, according to  
16 Christianity, could -- could be broken down as simply as this:  
17 Salvation is -- is the -- in Romans 6:23 says, "the wages of  
18 sin is death; but the gift of God is eternal life in Christ  
19 Jesus our Lord." Salvation is the process of being forgiven of  
20 all the guilt, sin, and -- and shame and the power of sin.  
21 Salvation, ultimately, is only acquired and established through  
22 Jesus and through per -- personal relationship with him.  
23 That -- that verse, Romans 6:23, defines what that actually  
24 looks like. So the wages of sin is death. In a -- in a simple  
25 format, wages are things that you -- you earn and Christianity



1 teaches that the wage of our sin, which has entered the world  
2 through the fall of man, the wages of our sin is -- is death.  
3 And if we broke down the word death, it would eternal damnation  
4 or eternal separation from God.

5 Q And then --

6 A But the gift of God is eternal life, which is the --  
7 the -- the gift is God himself through Jesus Christ and that  
8 gift is eternal life, which is eternal union with Christ. The  
9 only way that that is made possible is through Jesus, a  
10 personal relationship that is with Jesus. So that -- that  
11 is -- that is salvation in a nutshell. Comparing Mormonism  
12 versus Christianity in that regard, they are two different  
13 messages. Mormonism would -- would say that Jesus' atonement --  
14 so they -- they recognize that Jesus came and died, but they --  
15 his atonement provided what they call immortality for all  
16 people. They would take it to another degree and say,  
17 exaltation or Go -- Godhood is available only to Mormons  
18 through obedience to the LDS teachings. That includes their  
19 sacraments; that includes following the -- the religious  
20 teachings, and as a result, they can then become, in their  
21 Doctrine and Covenants, chapter 76, verses 58 to 59 says as it  
22 is written, "They are gods even in -- the sons of God.  
23 Wherefore all things are theirs." Meaning that they inherit  
24 that through a salvific understanding of -- of their faith  
25 through Mormonism.



1 Q Great. Okay. So now turn back to the doctrine of  
2 the trinity. Would you say that there's a fundamental  
3 difference between the understanding of the doctrine of trinity  
4 in Mormonism as compared to Christianity?

5 A Yes. Absolutely. So the doctrine of the trinity  
6 is -- is a -- is a -- a simple way of saying that -- that -- of  
7 recognizing Father, Son, and Holy Spirit. Th -- those are the  
8 three pieces that make up the trinity. Now, the trinity --  
9 an -- understood as -- through Christianity is the Father is  
10 the Spirit and has existed from all time. The Son, Jesus  
11 Christ, was once the Spirit but then he became man as a  
12 propitiation for our sins, the gospel part. So he came to  
13 earth to become man, so that he can live a perfect sinless  
14 life. That way, he can represent what that looks like for us  
15 to emulate. Because of the fall of sin, that -- we needed that  
16 and so Jesus was the only way that that could be made possible.  
17 And then the Holy Spirit is actually Jesus' spirit that he gave  
18 up when he -- be -- just before he ascended to heaven, shortly  
19 after he rose from the dead. That -- that ascension is when he  
20 gave up his spirit and now that spirit lives within us for  
21 those who say yes to a personal relationship with him. That is  
22 the trinity as a -- as a -- as a whole understanding for  
23 historic Christianity.

24 These three pieces are -- are absolutely necessary to the  
25 gospel. If we -- if we -- if the message of the gospel is



1 different and if the message of the trinity is different, we  
2 have completely different messages. Even if -- if one or the  
3 other is different, it's a completely different message.  
4 Mormonism would recognize God -- or they call him Heavenly  
5 Father -- as an exalted man with a physical body of flesh and  
6 bone. Christianity already does not teach or believe that.  
7 Only Jesus, ultimately, had flesh and bone because he came to  
8 earth to become man.

9 The founder, Joseph Smith, would say, if you were to see  
10 him today being Heavenly Father, you would see him like a man  
11 in form. That comes from his Teachings of the Prophet of  
12 Joseph Smith. And then they also recognize that the Holy  
13 Spirit is seen as three separate entities. This is key because  
14 Christianity doesn't believe Father, Son, and Holy Spirit as  
15 three separate entities. We rep -- recognize them as three  
16 separate persons. Think of it like water. Water is a solid, a  
17 liquid, and a gas. Three different states but the same thing.  
18 Mormonism would -- would recognize it like -- think of a -- a  
19 dinner: a chicken, a vegetable, and a drink. Three separate  
20 things. And so that -- that alone is -- is a massive  
21 difference and absolutely core to the -- the -- the teachings  
22 of.

23 Q Very good. And is there a fundamental difference  
24 between the authoritative works that are relied on in  
25 Christianity as compare with Mormonism?





1           A     Absolutely. So in Christianity, the -- the sole work  
2 of practice is the -- the Bible, God's word. We believe God's  
3 word is -- is his word to us today and it's what we -- we call  
4 a -- a cannon or a scriptural cannon, and it includes the Old  
5 Testament and New Testament. We believe, as 2 Timothy 3:16  
6 says that "All Scripture is God-breathed and is useful for  
7 teaching, rebuking, correcting, and training in righteousness."  
8 And so it's applicable for all thing in our lives.

9           And now Mormonism does recognize the Bible; however, it is  
10 not the same Bible. That is the key distinction. So they have  
11 four works. They have the Bible; they have the Doctrine of  
12 Covenants; they have the Pearl of Great Price, and then they  
13 have their additional testament that they call the Book of  
14 Mormon. The -- the key difference here -- I'll -- I'll start  
15 with the Bible. The -- the -- the Bible is different in  
16 Mormonism versus Christianity because Joseph Smith basically  
17 took -- the -- the original version in his day was the -- the  
18 King James Version -- granted there are different versions  
19 throughout the -- the world today and the -- Joseph Smith took  
20 the King James Version, which was the only version at the time  
21 in English, and he essentially added and a -- adjusted the --  
22 the Kind James Version to include over 3,900 different changes  
23 and that became the Joseph Smith-inspired testament. So that  
24 is the -- the Bible that -- that Mormonism uses today.  
25 Comparatively, it is not the same scripture.



1 Q And do Mormons consider the Bible as used in  
2 Christianity effectively incomplete and inaccurate?

3 A Effectively, yes. So Joseph Smith himself ha --  
4 ha -- has been quoted. He writes in his own teachings that  
5 it -- it is not -- it is not effectual. He -- he recognizes  
6 it -- the -- the Bible -- to be authoritative -- quote unquote  
7 authoritative -- as far as it is translated correctly. His  
8 translation, he determines correct as he -- he believed that  
9 also Mormonism, essentially, was birthed because he bel -- when  
10 he received a vision from God -- believed that all other  
11 religions were incorrect. So that authoritative work is --  
12 is -- is a key piece.

13 Q And who is the founder of Mormonism?

14 A Joseph Smith.

15 Q And who is the founder of Christianity?

16 A Jesus Christ.

17 Q In your opinion, are historical Christianity and  
18 Mormonism radically different?

19 A Radically different. Like was said, the -- the --  
20 the central message is not the same message.

21 Q And if you had to sum it up, is there one key point  
22 or one core difference that you could point to?

23 A Yeah. I would -- I would say that -- that -- that  
24 the gospel is the -- is the key point. Because the -- again,  
25 the wages of sin is death, but the gift of God is eternal life.



1 We only get to receive eternal life by our personal  
2 relationship with Jesus, but it begins there. And if that is  
3 out of whack, if -- if that is a -- a different message, then  
4 we actually miss the gospel.

5 MS. PETROLLE: Thank you. No more questions, Your  
6 Honor.

7 THE COURT: All right. Thank you. Cross-  
8 examination.

9 MR. BALL: I don't have any, Your Honor.

10 THE COURT: All right. A quick couple questions from  
11 the Court. Sir, so would Protestants be Christian -- be  
12 considered to be Christianity?

13 THE WITNESS: Yes.

14 THE COURT: And Lutherans?

15 THE WITNESS: Yes.

16 THE COURT: So how many different sects of  
17 Christianity are there?

18 THE WITNESS: There are a numerous number of -- of --  
19 of sects of Christianity. The Protestant faith would comprise,  
20 I believe -- a -- I actually shouldn't even give you a number,  
21 I -- I can't -- I don't have that accurate number. But there  
22 are a number of different sects. So you have the -- you have  
23 Lutherans; you have Methodist; you have evangelicals, which is  
24 what our church, Grace Community Church, would -- would  
25 identify as -- and are all Protestant in faith.



1 THE COURT: Is there any sort of extrinsic evidence  
2 that exists that delineates what is Christianity, what is the  
3 other religions -- in the sense of that they're -- that if  
4 somebody used the term Christianity, it encompasses these  
5 religions, but not these?

6 THE WITNESS: Yeah, so historically, whe -- when we  
7 talk about Christianity, we're referring to historic  
8 Christianity. The word Christian i -- is really i -- i --  
9 interprets as Christ follower. So just that -- that idea,  
10 anybody who believes in Jesus, a personal relationship with  
11 him, follows him, obeys his teaching, and holds fast to what  
12 his word says, would essentially be considered a Christ  
13 follower. However, the key distinction is that gospel message  
14 that we talked about just briefly. Only in Christianity and in  
15 the -- I mean, even the -- the different sects of Christianity  
16 hold fast to the gospel and -- and Scripture alone, through  
17 Christ alone, through faith alone. So w -- we would call that  
18 Sola Scriptura and that -- that is -- that is key to the -- the  
19 Christian faith, but that is also key to what -- what,  
20 denominationally within Christianity, sets Christianity apart  
21 from all other religions is the gospel message.

22 THE COURT: Okay.

23 MS. PETROLLE: May I ask one more question in  
24 redirect?

25 THE COURT: Sure.



## RESUMED DIRECT EXAMINATION

BY MS. PETROLLE:

Q Do you know of any other denomination of Christianity that follows the Pearl Price, Doctrine and Covenants, and Book of Mormon?

A Not at all. Only the -- only the Mormon faith does.

MS. PETROLLE: Thank you.

THE COURT: (Indiscernible) Thank you, sir.

THE WITNESS: Yeah, absolutely.

THE COURT: All right. Any other witnesses, Counsel?

MS. PETROLLE: Yes, Your Honor. I'd like to call Kathleen Guthrie to the stand.

THE COURT: Okay.

MS. PETROLLE: Good morning, Kathleen.

THE PETITIONER: Morning.

## KATHLEEN GUTHRIE

Petitioner, having been previously sworn, testified as follows:

## DIRECT EXAMINATION

BY MS. PETROLLE:

Q Were you represented by counsel in the underlying divorce?

A No, I was not.

Q And would you agree that there are substantial ambiguities in your existing parenting plan?

A Yes.



1 Q Do you and Father share joint legal decision-making  
2 authority?

3 A Yes.

4 Q Could you pull out Exhibit Number 22, please?

5 A Okay.

6 Q And could you turn to -- well, first of all, does  
7 this appear to be a true and accurate copy of your parenting  
8 plan filed on March 12th, 2018?

9 A Yes.

10 MS. PETROLLE: Your Honor, I'd like to request  
11 admission of Exhibit 22.

12 THE COURT: Any objection to 22?

13 MR. BALL: No objections.

14 THE COURT: 22 will be admitted.

15 (Petitioner's Exhibit 22 Received)

16 BY MS. PETROLLE:

17 Q Okay. And looking at page 5, what is your  
18 understanding of the religious decision-making agreement that  
19 you and Father reached?

20 A We had checked both boxes because, at the time, we  
21 were discussing we didn't really care which church. We didn't  
22 want to, like, keep somebody from going, like, to Grace or  
23 to -- at that time, he was going to Sun Valley Church or -- as  
24 long as it was a Christian faith, which is why we checked both  
25 boxes and we -- at that time, we both agreed what we had been



1 that accurate reading?

2 A Yes.

3 Q Okay. And would you agree that Father's limitation  
4 is consistent with your position that with -- there was at  
5 least some meeting of the minds as to the specific religion  
6 that the children were going to be instructed in?

7 A Yes.

8 Q Okay. However, as Mr. Girgenti just testified, you  
9 would not agree that Mormonism is Christianity?

10 A No, I would not. In fact, I even said so in -- in an  
11 email. As soon as I found out the kids were attending the  
12 Mormon church, I had specified that I did not agree it was  
13 Christian, and then at that same time, I had asked for us to go  
14 to the two respective churches that we were attending to get  
15 more -- because I'm not a theology person, but I was raised  
16 in -- with the Christian beliefs that Josh had already  
17 highlighted, and I knew that the Mormonism was not anywhere  
18 close to what we had intended.

19 Q Okay. So that kind of begs my next question, but at  
20 the time you entered into the parenting plan, would you have  
21 any reason to believe that Father had intended Christianity to  
22 be interpreted as Mormonism?

23 A No way. Because we had had discussions of -- of  
24 such, that Mormonism was not Christian.

25 Q Okay. And has your 16-year-old daughter recently



1 requested and in fact, been baptized in the Protestant church  
2 with Father's consent?

3 A Yes.

4 Q Do you believe that's a clear expression of her  
5 wishes?

6 A Yes.

7 Q Okay. And turning to Exhibit 3, please. The -- I  
8 believe it's the second page. And this is in the context of a  
9 discussion -- well, actually, let me start over. Sorry. Does  
10 this appear to be a true and accurate copy of an email exchange  
11 between you and Father dated November 26, 2018?

12 A Yes.

13 MS. PETROLLE: I'd like to request admission of  
14 Exhibit 3.

15 THE COURT: Any objection --

16 MR. BALL: No objections.

17 THE COURT: -- did you say 3?

18 MS. PETROLLE: Yes, 3.

19 THE COURT: No objections, sir?

20 MR. BALL: No, no objections, Your Honor.

21 THE COURT: All right. 3 will --

22 MS. PETROLLE: And --

23 THE COURT: -- be admitted.

24 (Petitioner's Exhibit 3 Received)

25 MS. PETROLLE: Oh, I'm sorry.





1 BY MS. PETROLLE:

2 Q On the second page, do you see the beginning of the  
3 last paragraph?

4 A Yes.

5 Q It says and this is Father speaking, "Bradley seems  
6 upset. He doesn't know his reasons for his disagreement." Is  
7 this in the context of your discussion about Mormonism?

8 A That -- yes.

9 Q Okay. And has anything changed, as far as you know,  
10 with your child's wishes not to participate in Mormonism?

11 A No, they actually all -- both of them wish to attend  
12 Grace and follow that doctrine.

13 Q Okay. And do you think it's confusing for the  
14 children to be compelled to be trained in both religions?

15 A I do. That's why we wrote the parenting plan as  
16 Christian faith and Christian faith only.

17 Q Okay. And has Father violated the parenting plan in  
18 other ways?

19 A Lots of ways.

20 Q For example, has he authorized Stepmother, without  
21 your consent, to take the children -- or -- to authorize  
22 medical treatment on behalf of the children?

23 A Yes. Not only -- there was no power of attorney for  
24 her to do that and as well -- the other thing is once we  
25 obtained those records, she also filled out the medical portion



1 statement. I'm not going to fight the -- I don't have a degree  
2 in theology -- I'm not going to fight the point-by-point on the  
3 religious thing -- but I -- I do have a statement I would like  
4 to read that I prepared.

5 THE COURT: Okay.

6 THE WITNESS: I believe the focus today is to be  
7 enforcement, expressly that the children may be raised in the  
8 Christian faith. I'm professing to be of the Christian faith  
9 in that Jesus Christ is the center point of my faith. I am not  
10 only a Christian, but more of a practicing follower of Jesus  
11 Christ than ever before in my entire life. My church bears his  
12 name and always emphasizes we should feast on the words of  
13 Christ.

14 That being said, I don't believe that being or not  
15 being a Christian is relevant. I am being accused of  
16 disregarding an agreement that I am legally bound to be in  
17 compliance of. The agreement focal point -- the agreement's  
18 focal point is the term "may", which is allowing for the choice  
19 to act or not act as described. The word, may, is legally  
20 defined as a choice to act or not act or a promise of a  
21 possibility as distinguished from "shall" which makes it  
22 imperative.

23 I contend that I choose to act permitted by the terms  
24 given me as described. I love God with all my heart, mind, and  
25 might. I love my savior who is Jesus Christ. I have not



1 drifted from worshiping my Creator through Jesus Christ. And I  
2 plan to teach my children all that it means by taking them to  
3 church and discussing the gospel inside my home.

4 MS. PETROLLE: May I respond?

5 THE COURT: I don't know if he's -- are you --

6 MS. PETROLLE: Sounds like it.

7 THE COURT: -- finished?

8 THE WITNESS: I am finished.

9 THE COURT: All right. Do you have any other  
10 testimony or information you'd like to provide to the Court?

11 THE WITNESS: No, Your Honor.

12 THE COURT: Okay. Then cross-examination.

13 CROSS-EXAMINATION

14 BY MS. PETROLLE:

15 Q Yes. Okay. Did you ever consult my client about  
16 whether or not you were allowed to vest Stepmother with  
17 authority to make medical decisions on behalf of the children?

18 A No, like I say it -- it might have been my own  
19 naivete, but I -- I just figured that was okay.

20 Q And you didn't obtain power of attorney with my  
21 clients' signature on it so that Stepmother could take the  
22 children for medical procedures?

23 A No.

24 Q And you didn't receive consent from my client in  
25 advance to go to the Sports and Orthopedic Medicine doctor,



1 MS. PETROLLE: Let me now -- we object, Your Honor.

2 THE WITNESS: -- and it's centered on Jesus Christ.

3 MS. PETROLLE: None of that was provided to use in  
4 advance.

5 THE COURT: Did you provide any exhibits that you  
6 were going to propose to the Court?

7 THE WITNESS: No.

8 THE COURT: In advance of today's hearing?

9 THE WITNESS: No.

10 THE COURT: Okay. All right. Then on the issue of  
11 the petition to enforce, the Court will take the matter under  
12 advisement and will render an opinion. With regard to the  
13 petition for modification, with the remaining time that we have  
14 left, what I'll do is we can schedule the children's  
15 interview -- given the age of the children, the Court would be  
16 interested in the children's views on these issues as part of  
17 it. And the Court's also aware that, I mean, that this was a  
18 default decree that was entered, was it not?

19 MS. PETROLLE: Yes, Your Honor. But if I might  
20 interject, it was default decree with collaboration by both  
21 parties. Mr. Ball reviewed everything; he made edits and  
22 changes, there -- I believe there's an email history to that  
23 effect if it needs to be provided. As you can see the  
24 parenting plan was signed off by both parties. So it was  
25 something that was done without counsel and because they



1 whether you like it or not forever since you decided that --  
2 since you all had children together. So they are the ties that  
3 bind and, you know, it's -- if you can attend weddings and  
4 happy events and different things together, it makes life much  
5 much easier for the children. So through the extent that you  
6 cannot have those kinds of issues arise, it's certainly in the  
7 kids' best interest, which the Court will expect that both of  
8 you will act in. All right. Given that, good luck to you  
9 both. Like I said, hopefully, you're able to resolve your  
10 issues if not, then I'm sure we'll be seeing you all again.  
11 Thank you.

12 MS. PETROLLE: Thank you.

13 MR. BALL: Thank you, Your Honor.

14 THE PETITIONER: Thank you.

15 MR. BALL: Thank you.

16 (Proceedings concluded at 10:56 a.m.)  
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/s/

KAYLA GRIFFIN,  
Transcriber

November 20, 2019



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