ORIGINAL

IN THE SUPREME COURT OF OHIO

HANIF IBRAHIM Plaintiff-Appellant	)	Case No. 14-0251
vs.	)	
	)	
SAKHI IBRAHIM Defendant-Appellee	)	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
	)	Court of Appeals Case No. 13 AP 681
		2013-Ohio-5401 (Trial Court No. 12 DR 1670)

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APPELLANT HANIF IBRAHIM'S AMENDED MEMORANDUM IN SUPPORT OF JURISDICTION

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PROPOSITION OF LAW: 1. When a trial court ignores the risks as detailed by the Bureau of Consular Affairs, the State Department, U.S. Government, the U.S. Department of Justice, the American Bar Association, and UCAPA, placing no restrictions on a parent's permanent relocation with a child, and forcing the other parent to sign for a child's passport to agree to international travel to a non-Hague Convention country, where there is no remedy to force the return of the child, this error is of Constitutional dimension. It deprives the left-behind parent of his right to association with his child and to be free from a deprivation of substantive due process of law in violation of his 1st, 4th, 9th and 14th Amendments rights, and further deprives him of his rights to equal protection of the courts in violation of the 1st and 14th Amendments, and his rights under the Ohio Constitution.

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EXPLANATION OF WHY THIS CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF PUBLIC OR GREAT GENERAL INTEREST

This is a divorce case in which Defendant-Appellee Sakhi Beeru (aka Sakhi Ibrahim) is an Indian national born in Dubai who prior to the marriage had lived most of her life in Dubai. She expressly indicated to the trial Court on at least two occasions that her intention was to permanently relocate with the parties' minor child "I.I." to Dubai, United Arab Emirates. The trial court after a trial awarded sole custody of the child I.I. to Sakhi, placing no restrictions on her relocation with the child anywhere in the world, and forcing Hanif to sign for an American passport for Ishaq and requiring Hanif to agree to Ishaq traveling with Sakhi out of the country, and in particular to Dubai. Neither India nor U.A.E. (Dubai) are Hague Convention countries. There is no remedy for Appellant Hanif Ibrahim if Sakhi chooses to remain in India or Dubai with the minor child. This error is of Constitutional dimension. The U.S. Supreme Court described in Troxel v Granville, 120 S. Ct. 2054, 530 U.S. 57 (2000) that the relationship between parent and child is Constitutionally protected:

"The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." Washington v. Glucksberg, 521 U.S. 702, 719 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." Id., at 720; see also Reno v. Flores, 507 U.S. 292, 301-302 (1993)."

There is a long line of federal court decisions that have, in the Fourteenth Amendment context, recognized that the relationship between parent and child is Constitutionally protected. Lassiter v. Department of Social Services, 452 U.S. 18, 101 S.Ct. 2153, 68 L.Ed.2d 640 (1981); Quilloin v. Walcott, 434 U.S. 246, 98 S.Ct. 549, 54

L.Ed.2d 511 (1978), *reh. denied,* 435 U.S. 918, 98 S.Ct. 1477, 55 L.Ed.2d 511 (1978) ; Cleveland Board of Education v. LaFleur, 414 U.S. 632, 94 S.Ct. 791, 39 L.Ed.2d 52 (1974); Wisconsin v. Yoder, 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972); Stanley v. Illinois, 405 U.S. 651, 770, 92 S.Ct. at 1213; Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965); Prince v. Massachusetts, 321 U.S. 158 (1944); Skinner v. Oklahoma, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942); Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923) the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children"); Duchesne v. Sugarman, 566 F.2 817 (2d Cir. 1977).

This trial Court in this case has ignored the obvious risks and complete lack of remedy for Father to force a return of the child if this Mother chooses to permanently relocate with the child to India or Dubai, U.A.E., which are both non-Hague Convention countries. This Court has Ordered the Father, under penalty of contempt, to assist in his own potential permanent loss of his right to access with his child by requiring him to allow international travel and sign for a passport for the child.

I. STATEMENT OF FACTS AND STATEMENT OF THE CASE

Hanif Ibrahim is a Pakistani-born American citizen who has lived in Ohio for 15 years. (Plaintiff's Affidavit, 8-24-12, p.4, p.8). Sakhi Beeru is a previously-divorced, (Tr. 127-129) Dubai, U.A.E.-born, Indian national, who just previous to her marriage to Hanif, lived in Germany and worked as a medical resident in obstetrics and gynecology for 17 months (Defendant's Affidavit, 8-24-12). Hanif and Sakhi met through an international arranged-marriage website, where Sakhi had posted an ad, and they married on March 31, 2011 in Dubai where her family resides. They promptly moved back to

Ohio where Hanif owned a home in Gahanna and held a job. They separated on February 25, 2012. Sakhi gave birth to a son, I.I., in Columbus Ohio, on April 3, 2012. I.I. is now 22 months old. Sakhi is not an American citizen and has no relatives in the United States other than her son I.I.. (Defendant's Affidavit 8-24-12). On April 17, 2012, Hanif filed a Complaint for Legal Separation, and further, because of real fears Sakhi would abscond with the child, Tr.26, 20-24, p.83, 13-20, p.88, 16- 90, 25, he requested a restraining order restraining Sakhi from leaving the jurisdiction with the minor child. On April 23, 2012, Sakhi filed for and received an ex parte civil protection order, Franklin County Common Pleas Court, case no. 12 DV 04 0609. On May 1, 2012, with her original counsel, Sakhi filed an Answer and Counterclaim in Divorce, and specifically requested that the Court permit her to permanently relocate with the child to Dubai, U.A.E. She also filed an affidavit wherein she stated that Hanif had threatened to kill her and threatened that he would "flee to other parts of the United States" and take the child. She again asked that the Court allow her to permanently relocate with the child to Dubai. Despite Sakhi's allegations, all self-serving and entirely uncorroborated, of Hanif's threats to kill her or shoot her, no criminal complaints were ever filed, no police reports were offered in evidence, and no officers were called to testify at the trial by Sakhi's counsel. Tr. *passim*. On May 23, 2012, now with new counsel, Hanif filed an Amended Complaint for Divorce, wherein he prayed that "the Court allocate to the parties parental rights and obligations relating to their minor child". On June 15, 2012, Sakhi voluntarily dismissed her CPO action before the final hearing, and on June 14, 2012, the parties entered into a Mutual Restraining Order in the divorce case and an agreement for shared parenting. On June 18, 2012, now also with new counsel, Sakhi filed her Answer to

Hanif's Amended Complaint for Divorce, wherein she prayed on page 2 that "the Court grant her the relief requested in her original Answer and Counterclaim for Divorce which was filed on 05/01/12." As such, she continued to request that she be permitted to permanently relocate to Dubai with the minor child. Sakhi claimed that despite the fact that Hanif was an American citizen and a long-time resident of Ohio, he had somehow agreed to reside in Dubai after the child was born. Defendant's Affidavit, 8-24-12; in her Answer to Hanif's Amended Complaint, p.2, she claims that he had "discussed" moving to Dubai, among other places, not "agreed"; at trial, she claims that Hanif "expressed interest in going back to the Middle East and settle down .. by the time the kids are school going years of four to five years after marriage or after kids." Tr. 170, 20 – 171, 6.

In Hanif's Affidavit of 8-24-12, p. 10. Hanif insisted that the parties' plan was that after the wedding the parties would live in the United States where Hanif owned a home and had lived for almost half his life. Plaintiff's Affidavit, p.10, Amended Complaint p.2. Sakhi wanted to move back to Dubai while still pregnant with the child. At trial, Sakhi claimed that she wanted to go to Dubai while pregnant only because of a convention she called "confinement" – basically that a new mother rest for 40 days and stay home to avoid infection[1]. While still pregnant, Sakhi insisted to Hanif that she was going to go back home to Dubai. Tr. 232, 2-3. Hanif would not permit it. Tr. 226, 6-8. Hanif explained that because of his refusal to permit her to leave while pregnant with his child, that prior to the birth of their child, Sakhi's parents came from Dubai to Gahanna

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[1] Tr. 225 19-226, 2. There is no religious connotation to "confinement". Sakhi is not religious. Tr. 170, 10-19: "it was okay that I wasn't too religious because he said I was going to be living with him, so it was okay that I wasn't too religious, but he wanted me to behave the part in front of his parents when they would be visiting. And that is something that is important to me because I was not ready to start wearing the head covering…"

Ohio and acquired and paid for a two-bedroom apartment for Sakhi to live in[2]; at trial Sakhi claimed that it was "culturally important" for Sakhi and her parents to be together prior to the birth. As soon as the child was born, Hanif states Sakhi's father announced to Hanif that Sakhi and the child would be leaving with them for Dubai immediately. Tr.26, 20-24, p.83, 13-20, p.88, 16- 90, 25. Sakhi admits they were going to Dubai. Tr. 230, 2-13, 232, 2-3. Alarmed, Hanif filed a Complaint for Legal Separation and for restraining order, which he received, and a few days later, Sakhi filed for the CPO. Hanif subsequently notified Immigration that Sakhi was fabricating domestic violence allegations against him (Tr.102, 3-21, 103, 6-104, 8) to take advantage of VAWA[3] benefits (Violence Against Women Act) or to get special treatment at Hanif's expense (Tr. 95, 17- 96, 20). Sakhi was self-supporting as a medical resident in Dubai and Germany for 3 years immediately prior to the marriage. Plaintiff's Affidavit, 16, 17, 20; Tr.151-152; at trial she states "I was doing pretty well for myself there" Tr. 171, 18.

The parties entered into a stipulated agreement concerning property and debts, December 2012, but could not agree on custody. The Guardian ad Litem considered, and evidently discounted, Sakhi's uncorroborated claims that Hanif had threatened to shoot her, etc. The Guardian filed an Interim Report and Recommendation on February 20, 2013, and filed a Proposed Shared Parenting Plan for the child, naming Sakhi the school placement parent, and with language regarding the guardian as the keeper of the passport, but permitting international travel with some restrictions.

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[2] Tr. 226-228.

[3] The VAWA immigration-related provisions reside in the Immigration and Nationality Act (INA) which is Title 8 of the United States Code. VAWA was passed as Title IV, sections 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355, and signed as P.L. 103-322 by President William Clinton on September 13, 1994.

The case was set for trial February 27, 2013. Hanif could not agree to cooperate in the acquisition of a passport for I.I. or to permit I.I. to travel to Dubai with Sakhi, for fear the child would never return. Hanif's opening statement sums up his concerns:

"Your Honor, this case was put in this legal judicial system because of the threat me and my parents got from the opponent, my wife's father, and herself wanted to take the baby ...We have a restraining order done against their will, and now we are fighting to keep the baby in the United States. And the baby is a U.S. citizen. I'm a U.S. citizen. I'm not going anywhere. This is my home, and that's all I'm here for." Tr. 11, 5-15.

After the trial, the Guardian filed a Final Report and Recommendation, March 29, 2013. The Guardian states that despite the fact that Father "loves his son and I have witnessed genuine affection between him and the baby" (Final Report, p.2), and despite the fact that Father "has worked to prepare his home for [I.I.]" and "has 'baby proofed' the house, set up a bedroom with a crib for his use, he has a pack and play in the living room for him, a walker, toys, baby food, diapers, etc." (Final Report, p.3) she recommends that Mother be awarded sole custody because, in pertinent part, "he [Hanif] contacted the United States Department of State to allege that she is a risk to the child as she is planning an abduction of him from the United States" (Final Report, p.2), and "Father professes to be concerned that Mother has no ties to this community and therefor[sic] is an imminent risk of secreting the minor child out of the country and away from him permanently" (Final Report, p.3). All of Father's efforts to prevent international child abduction are considered negatively by the Guardian. The Guardian recommends that Mother be awarded sole custody, because neither party had filed a shared parenting plan. The Guardian expresses great concern and advocates that Mother be allowed to travel overseas with the child since

"Mother has not been employed since she lived in the United States ... She has no family residing in the United States. Her immediate family remains in Dubai and she has

extended family living in India. Her parents have come to stay with her three times since the marriage for extended periods of time. For [I.I.] to have an ongoing relationship with his Mother's immediate family it is reasonable to expect during his minority he will travel to their home in Dubai and India with his Mother." (Final Report, p.3).

She ultimately recommends that Father receive essentially Franklin County Local Rule 27 visitation. (Final Report, p. 7-10). She also recommends that the parties "cooperate in obtaining and keeping a valid United States passport" for I.I., that the Guardian hold the passport "when not in use", and that the party proposing travel with Ishaq give the other parent 45 days notice, and if the second parent does not agree to the travel plans, the Court may **order** the travel after hearing. Finally, the Guardian recommends that the second parent "shall not notify any entity, government or otherwise, accusing the other parent of abduction of the child." (Final Report, p. 11-12).

Hanif included as an exhibit in his closing argument, the affidavit of Preston Findlay, Counsel for the Missing Children Division of the National Center for Missing and Exploited Children. Findlay's affidavit restates well-known characteristics of abductors listed by the Bureau of Consular Affairs, the State Department, U.S. Government, the U.S. Department of Justice, and the American Bar Association for prevention of abduction. Sakhi meets at least six of the characteristics listed by these bodies. There is realistically nothing to stop Sakhi from traveling with the child once she has the passport in her hands and nothing to stop Sakhi from not bringing the child back. It is exceedingly simple for Sakhi to get a Visa for the child to Dubai once she has possession of the child's passport; were Hanif to file a contempt against Sakhi once she is gone with the child, it would be a pointless exercise. Indeed, the request for a high bond is standard in these kinds of cases. Travel.State.Gov, Guarding against International Child Abduction, http://travel.state.gov/abduction/prevention/prevention_560.html#.

On July 11, 2013, the trial Court basically adopted the Guardian's Final Report and Recommendation, in its Judgment Entry Decree of Divorce. Exhibit 1. Because Sakhi smartly said at trial that her intent "is not *currently* to leave the United States" the Court determined that she is not a flight risk and that reasonable international travel with I.I. should be permitted. Decree, 15-16. The Court was disturbed that Hanif issued abduction alerts to state and international agencies. The Court awarded Sakhi sole custody, gave Hanif Local Rule, *did not* prevent Sakhi from relocating anywhere in the world[4], and further dismissed the temporary restraining order that prevented her from permanently relocating the child out of the jurisdiction of the Court. Finally, the Court adopted the International Travel and Passport language verbatim from the Guardian's recommendation.

Hanif timely appealed with the Tenth District Court of Appeals who affirmed the trial Court on December 6, 2013. Exhibit 2. Hanif then filed an Application for Reconsideration, which was also denied on January 15, 2014. Exhibit 3.

PROPOSITION OF LAW: 1. When a trial court ignores the risks as detailed by the Bureau of Consular Affairs, the State Department, U.S. Government, the U.S. Department of Justice, the American Bar Association, and UCAPA, placing no restrictions on a parent's permanent relocation with a child, and forcing the other parent to sign for a child's passport to agree to international travel to a non-Hague Convention country, where there is no remedy to force the return of the child, this error is of Constitutional dimension. It deprives the left-behind parent of his right to association with his child and to be free from a deprivation of substantive due process of law in violation of his 1st, 4th, 9th and 14th Amendments rights, and further deprives him of his rights to equal protection of the courts in violation of the 1st and 14th Amendments, and his rights under the Ohio Constitution.

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[4] The Relocation Notice 3109.051(G) language in the decree (Decree, p.34) simply says that the other parent or the court may file a motion to determine whether "it is in the best interest of the child to revise the parenting time schedule" after a Notice of Intent to Relocate is filed. Nothing in that statute gives a trial court the ability to block a custodial parent's decision to relocate the child outside of Franklin County, Ohio. *Zimmer v. Zimmer*, 2001-Ohio-4226, 10th District.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW[5]

Child abduction, is defined as the "unilateral removal or retention of children by parents, guardians or close family members."[6] Until the implementation of the 1980 Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention),[7] the problem of international child abduction had not received much beyond cursory attention.[8] The Hague Convention expressly intended "[a.] to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and [b.] to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States."[9] Based exclusively in civil international law,[10] the Hague Convention governs cases dealing with international child abduction among the ninety countries that are signatories to the Hague Convention.[11]

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[5] Many of the ideas expressed here are more fully explained in Smita Aiyar, Comment, *International Child Abductions Involving Non-Hague Convention States: The Need for a Uniform Approach*. 21 Emory Int'l L. Rev. 277.

[6] PAUL R. BEAUMONT & PETER E. MCELEAVY, THE HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION 1 (1999). This definition is used primarily within the private international law domain. *Id.*

[7] Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 [hereinafter Hague Convention].

[8] BEAUMONT & MCELEAVY, *supra* note 6, at 3. 12

[9] Hague Convention, *supra* note 7, art. I. 13

[10] Cara Finan, Comment, *Convention on the Rights of the Child: A Potentially Effective Remedy in Cases of International Child Abduction*, 34 SANTA CLARA L. REV. 1007, 1013 (1994). It is important to recognize that the Hague Convention cannot impose criminal liability on the abductor parent. *Id.*

[11] Hague Conference on Private Int'l Law, Status Table 28: Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, http://hcch.e-vision.nl/index_en.php?act=conventions. status&cid=24 (last updated June. 27, 2013) [hereinafter Hague Status Table].

However, child abductors frequently flee to non-signatory countries because the return of the child is not guaranteed.[12] In such instances where the Hague Convention does not apply, the U.S. government can do little to help the left-behind parent, especially if the non-signatory nation ignores requests for the child's return.[13] As the recent case of *Taveras v. Taveras*[14] illustrated, the Hague Convention's provisions can only be applied to situations where, prior to removal, the child was a habitual resident of a contracting State and was subsequently removed to another contracting State.[15] Neither India nor U.A.E. (Dubai) are Hague Convention countries.[16] Currently, none of the countries that have an Islamic family law system are party to the Hague Convention.[17]

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[12] Dorothy Carol Daigle, Comment, *Due Process Rights of Parents and Children in International Child Abductions: An Examination of the Hague Convention and Its Exceptions*, 26 VAND. J. TRANSNAT'L L. 865, 871 (1993).

[13] U.S. DEP'T OF STATE, REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION (2005), http://travel.state.gov/family/abduction/hague_issues/hague_issues_2537.html [hereinafter 2005 COMPLIANCE REPORT]. The State Department report covers the period from October 1, 2003 to September 30, 2004 and contains information available to the United States regarding that time period. Approximately 70 percent of all child abduction cases during the period from October 1, 2003 to September 30, 2004 involved a non-Convention country. *Id.*

[14] Taveras v. Taveras, 397 F. Supp. 2d 908, 912 (S.D. Ohio 2005) (citing Mohsen v. Mohsen, 715 F. Supp. 1063 (D. Wyo. 1989)) (dismissing a left-behind parent's petition for the return of the child under the International Child Abduction Remedies Act after the child was abducted from Bahrain and removed to the United States because of lack of reciprocity between the United States and Bahrain). *See generally* Mezo v. Elmergawi, 855 F. Supp. 59 (E.D.N.Y. 1994).

[15] *See, e.g.*, Marriage of Hooft van Huysduynen (1989) 99 F.L.R. 282 (Austl.). In that case, the Court ruled that the requirement that the child must have been habitually resident in a convention country does not apply to countries that merely have signed the Convention without further ratification or approval. *Id.*

[16] Hague Convention Status Table, *supra* note 11.

[17] Ericka A. Schnitzer-Reese, Comment, *International Child Abduction to Non-Hague Convention Countries: The Need for an International Family Court*, 2 NW. U. J. INT'L HUM. RTS. 7, at 7 (2005).

2. Lack of Applicability of the Hague Convention in Non-Signatory Nations Leaves Few Options for the Child' s Return

Generally, when a child is abducted to a non-signatory country (especially one governed by Islamic law), the parent attempting to secure the return of the child is faced with the harsh reality that his government has very few options to secure the safe return of the child.[18] This is illustrated in the case of *Mezo v. Elmergawi*.[19] In that case, the mother sought the return of her children, whom their father abducted to Egypt then moved to Libya.[20] As neither Egypt nor Libya was a party to the Convention at the time of the incident, the *Mezo* Court denied the remedy requested, stating that when "a child is taken from a non-signatory country and is retained in a signatory country," or vice versa, it is well-settled law that "**there is no remedy**."[21]**There is <u>no remedy</u> when a child is taken from a signatory country, the U.S., and is retained in a non-signatory country, Dubai, U.A.E., or India, unless the abductor returns to the U.S., and even then the IPCKA[22] cannot force extradition of the child. There is only prevention of abduction.**

3. Prevention of Abduction – UCAPA

In 2006, the Uniform Law Commission (ULC) promulgated the Uniform Child Abduction Prevention Act (UCAPA)[23]. This uniform law originated by the parents of internationally abducted children[24], and parents fearing their children would be abducted.

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[18] *See generally* Schnitzer-Reese, *supra* note 17, at 11–16.
[19] *See Mezo*, 855 F. Supp. at 60.
[20] *Id.*
[21] *Id.* at 63, emphasis added.
[22] International Parental Kidnapping Crime Act, 18 U.S.C. § 1204(a)-(b) (2006).
[23] Uniform Child Abduction Prevention Act
[24] http://www.uniformlaws.org/shared/docs/child_abduction_prevention/childabduct_intro materials.pdf

UCAPA sets out a wide variety of factors that should be considered in determining whether there is a credible risk that a child will be abducted. The act also addresses the special problems involved with international child abduction by including several risk factors specifically related to international abduction. In particular, the act requires courts to consider whether the party in question is *likely to take a child to a country that isn't a party to the Hague Convention*, or to a country that has laws that would restrict access to the child. If a court determines that a credible risk exists that the child will be abducted, *it may then enter an order containing provisions and measures meant to prevent abduction.* The act lists a number of specific measures that a court may order. These include imposing travel restrictions, prohibiting the individual from removing the child from the State or other set geographic area, placing the child's name in the United States Department of State's Child Passport Issuance Alert Program, or requiring the individual to obtain an order from a foreign country containing identical terms to the child-custody determination. Such orders are commonly referred to as "mirror orders." An abduction prevention order is effective until the earliest of the order's expiration, the child's emancipation, the child's 18th birthday, or until the order is modified, revoked, or vacated.

The American Bar Association, NCMEC (National Center for Missing and Exploited Children) and the U.S. State Department all recommend that if a child is at risk of being taken to another country the custody decree must include the terms of the Hague Abduction Convention that apply if there is an abduction or wrongful retention. The American Bar Association also suggests requesting the court, if the other parent is not a U.S. citizen or has significant ties to a foreign country, to require that parent to post a

bond, not just as a deterrent to abduction but, if forfeited because of an abduction, as a source of revenue for the left behind parent in his efforts to locate and recover the child.

Sakhi Ibrahim presents a credible risk of permanent abduction of the child to a non-signatory country, Dubai, U.A.E., or India

Hanif included as an exhibit in his Closing Argument for Trial, the affidavit of Preston Findlay, Counsel for the Missing Children Division of the National Center for Missing and Exploited Children. Findlay's affidavit restated well-known characteristics of abductors listed by the Bureau of Consular Affairs, the State Department, U.S. Government for prevention of abduction at http://travel.state.gov/abduction/prevention/prevention/prevention_2873.html; these same characteristics are also recited by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Program, U.S. Department of Justice at https://www.ncjrs.gov/pdffiles1/ojjdp/215476.pdf; these same characteristics are also recited by the American Bar Association in cooperation with the National Center, http://www.missingkids.com/en_US/publications/NC75.pdf. Sakhi meets at least six of the characteristics listed by these bodies: she has no strong ties to the child's home state – indeed, she has no ties at all, friends or family living in another country, a strong support network, she is not tied to this area for financial reasons, she is engaged in planning activities to leave with the child, to Dubai, and told the world she wanted to permanently relocate with the child to Dubai, in Court documents, in writing, and by affidavit, on more than one occasion, and has a history of marital instability. The Hague Convention is not enforceable in India or United Arab Emirates, and further U.S. custody orders are not recognized or enforceable in India and United Arab Emirates.

http://travel.state.gov/abduction/country/country_4441.html#,

http://travel.state.gov/abduction/country/country_5914.html.

Sakhi also presents a credible risk of international abduction according to UCAPA. Section 7 of the UCAPA lists the factors to determine risk of abduction. These include,

(2) has threatened to abduct the child;
(3) has recently engaged in activities that may indicate a planned abduction, including:...
(E) applying for a passport or visa or obtaining travel documents for the respondent, a family member, or the child; or ...
(6) lacks strong familial, financial, emotional, or cultural ties to the state or the United States;
(7) has strong familial, financial, emotional, or cultural ties to another state or country;
(8) is likely to take the child to a country that:
(A) is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and does not provide for the extradition of an abducting parent or for the return of an abducted child;
...
(13) has engaged in any other conduct the court considers relevant to the risk of abduction.

In In re Guardianship of Stein, 105 Ohio St. 3d 30, 2004, the Ohio Supreme Court quotes the U.S. Supreme Court: "[A] parent's desire for and right to `the companionship, care, custody and management of his or her children' is an important interest that `undeniably warrants deference and, absent a powerful countervailing interest, **protection**.'" Lassiter v. Dept. of Social Serv. (1981), 452 U.S. 18, 27, 101 S.Ct. 2153, 68 L.Ed.2d 640 (emphasis added), quoting Stanley v. Illinois (1971), 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 Sakhi clearly has a potential risk for international abduction. This trial court is permitting it to happen. State Judges, as well as federal, have the responsibility to respect and protect persons from violations of federal constitutional rights. Goss v. State of Illinois, 312 F 2d 257; (1963). There is a credible risk that permitting Sakhi to take the child to Dubai, a non-Hague Convention country, or to relocate to Dubai or India, may permanently sever Hanif's access to his child. The Due

Process Clause of the Fourteenth Amendment requires that severance in the parent-child relationship caused by the state occur only with rigorous protections for individual liberty interests at stake. Bell v. City of Milwaukee, 746 F 2d 1205; US Ct App 7th Cir WI, (1984). Non-custodial parents have a liberty interest in visitation with their children. *See* Franz v. United States, 707 F.2d 582, 602 (1983). The court analyzed "the constitutional status of the right of a non-custodial parent and his or her children not to be totally and permanently prevented from ever seeing one another." *Id.* Hanif by way of this divorce decree has no way to implement the constitutionally protected right to maintain a parental relationship with his child except through visitation – "parenting time". To acknowledge the protected status of the relationship, and yet deny **protection** to visitation, which is the exclusive means of effecting that right, is to negate the right completely.

CONCLUSION AND REQUEST FOR RELIEF:

In light of the above arguments, and for any other reason apparent to this Court, Appellant respectfully requests that this Court accept this case, so that Appellant's access to his child is not permanently severed.

Respectfully submitted,

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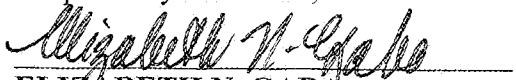
CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing document was served upon Defendant-Appellee Sakhi Ibrahim by and through her attorney Virginia Cornwell, Esq., 603 E. Town St., Columbus, Ohio 43215, and upon the Guardian ad Litem, Kristy

Swope, Esq. 6480 East Main St., Suite 102, Reynoldsburg Ohio 43068 via ordinary U.S. mail, postage prepaid, and email transmission on this the 3rd day of March 2014.

Respectfully submitted,



ELIZABETH N. GABA
S.CT. NO. (0063152)
Attorney for Plaintiff-Appellant

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO
DIVISION OF DOMESTIC RELATIONS

Hanif Ibrahim,	:	
	:	Case No. 12 DR 1670
Plaintiff,	:	
	:	
vs.	:	Judge Mason
	:	
Sakhi Ibrahim,	:	
	:	Magistrate Sieloff
Defendant.	:	

JUDGMENT ENTRY - DECREE OF DIVORCE

This case came before the Court upon the Plaintiff, Hanif Ibrahim's *Complaint for Legal Separation* filed on April 17, 2012, his subsequently filed *Amended Complaint for Divorce*, as filed on May 23, 2012, and the Defendant, Sakhi Ibrahim's *Answer and Counterclaim for Divorce*, filed on May 1, 2012, and Amended Answer filed on June 18, 2012. This matter commenced for trial on February 27, 2013; testimony was heard on February 28, 2013, March 1, 2013, and March 4-5, 2013. On February 27, 2013, Plaintiff discharged his attorney, Suzanne Sabol, immediately before trial began, and represented himself *pro se*. Defendant was represented by Attorney Virginia Cornwell. Also present was Kristy Swope, the Guardian ad Litem for the parties' minor child, Ishaq Hanif Ibrahim. Proposed Findings of Fact and Conclusions of Law were due to the Court by the parties on April 5, 2013; both Plaintiff and Defendant timely submitted same. The Guardian ad Litem timely submitted her Final Report and Recommendation on March 29, 2013.

I. Jurisdiction

The parties have stipulated and the Court finds that Plaintiff and Defendant have been residents of the State of Ohio for more than six months and residents of Franklin

EXHIBIT 1

County for more than ninety days preceding the filing of the Plaintiff's *Complaint for Legal Separation*, Plaintiff's *Amended Complaint*, and Defendant's *Counterclaim for Divorce*. The parties have stipulated, and the Court further finds that both parties were properly served pursuant to the Ohio Rules of Civil Procedure. The Court finds that the parties were married in Dubai, United Arab Emirates on March 31, 2011, and one child, [redacted], DOB [redacted]/2012, was born as issue of the marriage. *See Agreed Stipulation* filed December 3, 2012, Defendant's Exhibit V. Accordingly, the Court finds it has jurisdiction over the subject matter of the action and personal jurisdiction over the parties.

II. Agreed Stipulation

The parties, both represented by counsel at the time, entered into an *Agreed Stipulation* on December 3, 2012. This Agreed Stipulation resolved the following matters: jurisdiction and service, duration of the marriage, grounds for divorce, property division including all assets and debts, as well as a waiver of valuation of these assets and liabilities, spousal support, attorney fees (except for those related to the December 12, 2012, hearing with respect to Plaintiff's Rule 75 Motion and Defendant's Motion to Show Cause/ Contempt), preservation of temporary orders, guardian ad litem fees, Defendant's restoration to her maiden name, and court costs. Both parties acknowledged at trial that they wished to make this Stipulation an order of the Court.

The stipulation contains a notation regarding the effective date which states simply "Unless otherwise specified herein". Defendant testified at trial to the effect that the parties intended the property division to be effective the date the parties signed the agreement, which was December 3, 2012, and this was not disputed by Plaintiff. The

Court therefore finds that the effective date of the *Agreed Stipulation* is December 3, 2012, unless otherwise specified therein.

The Court adopts the findings and agreements contained in the document titled "Agreed Stipulation" filed with this Court on December 3, 2012 as if fully rewritten herein, incorporates the Stipulation by reference, and make the same an order of this Court.

III. Relevant Procedural Background

The parties were married on March 31, 2011, as an arranged marriage through a web site. On February 25, 2012, the parties physically separated, and their son, [redacted] was thereafter born on April 4, 2012. On April 17, 2012, Plaintiff Father filed a Complaint for Legal Separation. On or about April 23, 2012, the Defendant Mother was granted a civil protection order with Plaintiff Father as Respondent. On May 23, 2012, Plaintiff Father amended his complaint to request a divorce from the Defendant Mother. See *First Amended Complaint*. On June 14, 2012, the parties entered into an *Agreed Order Regarding Beneficial Use, Restraining Order and Temporary Visitation Order*. Pursuant to this *Agreed Order*, the parties were to have no contact with one another, although these stay away provisions did not apply to the exchange of the minor child. Additionally, there were limited exceptions to permit the parties to e-mail or text each other on issues pertaining to the minor child's care and parenting time, so long as the parties did not utilize e-mail or texting to harass the other parent. The parties were also permitted to contact each other via telephone in the event of an emergency involving their minor child. Defendant Mother was granted exclusive use of the 1992 Acura automobile. With respect to parenting time, both parents were designated as the

residential parent and legal custodian during his/her respective parenting time. Plaintiff Father was to have parenting time every Tuesday and Thursday from 6:00 p.m. until 9:00 p.m, and every Saturday and Sunday from 10:00 a.m. until 1:00 p.m., and as the parties otherwise agreed. With respect to transportation, if the parties' parents were not available for exchanges, the exchanges were to occur at the Gahanna Police Department. Thereafter, Defendant Mother requested dismissal of the civil protection order, and the case was terminated. Defendant Mother filed her *Answer* to the *First Amended Complaint* on June 18, 2012.

On September 27, 2012, the Magistrate's Temporary Order was issued. In addition to the custody and parenting time as originally agreed upon by the parties in the Agreed Order of June 14, 2012, the Magistrate issued the following Order, effective April 17, 2012:

1. Plaintiff Father shall immediately register and attend the "Parenting Separately" course at the Elizabeth Blackwell Center with Dr. Yvonne Gustafson;
2. Effective April 17, 2012, Plaintiff Father shall pay temporary child support in the amount of $700.00 per month, plus processing charge;
3. Plaintiff Father's arrearages shall be liquidated at 20% of the current order;
4. Plaintiff Father shall maintain all levels of medical and hospitalization insurance for the benefit of the child and the Plaintiff Father and Defendant Mother;
5. Plaintiff Father shall pay 90% and Defendant Mother shall pay 10% of all ordinary and extraordinary uninsured medical, dental, and other health care expenses of the child. All expenses shall be submitted to the insurance provider prior to seeking reimbursement or contribution from the other party. Reimbursement shall

be made within 30 days;

6. Plaintiff Father shall pay attorney's fees in the amount of $1,500.00 to Defendant Mother within 30 days, and made payable directly to Defendant's counsel;
7. Plaintiff Father to pay all expenses in his individual name, all expenses associated with his vehicle, as well as licensing and insurance for the vehicle in Defendant Mother's possession, all remaining medical expenses associated with Ishaq's birth, and the utility expenses for his residence;
8. Defendant Mother to pay all expenses in her individual name, and all other expenses associated with the vehicle in her possession.
9. Additional temporary orders included that Plaintiff Father was to immediately provide Defendant Mother with all updated insurance and registration documentation for the vehicle in Defendant's possession; that Plaintiff Father shall immediately provide all food stamps in his possession to Defendant Mother; that both parties were to transport the child in an appropriate car seat; that Plaintiff Father immediately provide to the Guardian ad litem any documents in his possession that belong to the Defendant Mother; that neither party remove the child from the jurisdiction of this Court, and that Defendant Mother shall be the only party permitted to receive public assistance for the minor child so long as she is eligible.

Thereafter, Plaintiff Father filed a Motion for a Rule 75(N) hearing on October 26, 2012, and that matter was heard on December 12, 2012, before the Magistrate, and subsequently denied on June 18, 2013. On June 20, 2013, the Magistrate also issued his Decision with respect to Defendant's Motion for Contempt filed November 8, 2012,

granting the motion in part.

IV. Division of Property

The parties have stipulated and the Court finds that the duration of the parties' marriage was March 31, 2011, until the date of the final hearing, to wit: February 28, 2013. As indicated above, the Court finds that the parties have stipulated as to all issues of marital property and debts. The Court hereby incorporates the parties' *Agreed Stipulation* filed on December 3, 2012, attached as Court's Exhibit A. Finally, the parties stipulated and the Court finds that the division of property, while not precisely equal, is fair and equitable.

V. Spousal Support

The parties stipulated, and the Court finds that neither party shall pay spousal support to the other; furthermore, the Court shall not retain continuing jurisdiction with respect to spousal support. *See Agreed Stipulation* filed on December 3, 2012.

VI. ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES

Although Plaintiff Father, in his April 17, 2012, *Complaint for Legal Separation*, requested sole custody, or in the alternative, Shared Parenting, Plaintiff's May 13, 2012 *First Amended Complaint,* which requested divorce rather than legal separation, contained no such request for shared parenting. Defendant Mother's argument is that Plaintiff Father's *First Amended Complaint* did not renew his original request for Shared Parenting, and therefore, the Court may not consider his request for Shared Parenting. Nonetheless, the Court finds that the Plaintiff Father did ***not*** file a Proposed Shared Parenting Plan, and therefore, any such request for Shared Parenting will not be considered.

R.C. 3109.04(F) provides the statutory criteria for the court to consider in the allocation of parental rights and responsibilities. In a divorce, the court must allocate the parental rights and responsibilities for the minor children born as issue of the marriage. R.C. 3109.04(A).

The Court makes the following findings with respect to the factors of R.C. 3109.04 (F)(1):

A. "The wishes of the child's parents regarding the child's care;" R.C. 3109.04(F)(1)(a).

Based upon Plaintiff Father's narrative testimony, he wants sole custody of Ishaq, and is willing to work on 50/50 time share of parenting time with the Defendant if she can stay in this country after March. However, as stated within his *Closing Statement, Findings and Facts and Recommendations of Plaintiff,* Plaintiff Father requested shared parenting with equal parenting time by alternating weeks for the next four years and then for the remaining years, alternating two week periods with no provision for holidays, vacations, or international travel.

Based upon her testimony, the Defendant Mother is requesting sole custody so long as she resides within Ohio. She is requesting a schedule of several day visits on Wednesdays, and alternate Saturday and Sundays, as she has concerns with the minor child having overnights with the Plaintiff Father prior to the child being able to communicate his needs. Plaintiff Mother's concern was aptly demonstrated in her testimony concerning Ishaq's day visit with Father on or about August 18, 2012, wherein Mother sent him in a clean diaper marked with an "X" inside the diaper prior to the 10:00 a.m. scheduled parenting time. After the conclusion of Father's parenting time at approximately 1:00 p.m., Mother testified that [redacted] remained in the same diaper for this

time period as demonstrated by the presence of the "X" in the diaper upon the child's returning home to her.

Defendant Mother also testified regarding what she perceived as Plaintiff Father's determination to switch Ishaq to formula while she was still breast feeding, despite her requests and what she believes was the recommendation of Ishaq's pediatrician. Defendant Mother also testified regarding a time where [redacted] had to go to the emergency room for projectile vomiting immediately after the conclusion of Plaintiff Father's visit. On that occasion, according to Defendant Mother, Plaintiff Father was reluctant to answer the doctor's questions about what he had been feeding Ishaq. Despite Defendant Mother's concerns about Ishaq's safety, she has not denied Plaintiff Father parenting time.

During the pendency of the litigation, the parties have engaged in a parenting schedule providing Plaintiff Father parenting time with Ishaq every Tuesday and Thursday from 6:00 p.m. until 9:00 p.m. and every Saturday and Sunday from 10:00 a.m. until 1:00 p.m. Defendant Mother proposes an expanded schedule to include one overnight once [redacted] is two years old, and once he reaches school age, she proposes some slight additional time for Plaintiff Father.

Although Defendant Mother has been [redacted]'s primary caregiver since birth, the schedule has allowed [redacted] to have regular and frequent contact with Plaintiff Father. Plaintiff Father testified that he repeatedly spoke to the Guardian ad litem to request overnight visitation.

Plaintiff Father's parents, whose permanent residence is in Pakistan, were staying with him at the time of trial. Plaintiff believes that his parents are suitable

caregivers for [redacted] while he is at work. He would like [redacted] to have more time at his house, with his parents watching [redacted] while he is at work. However, Defendant Wife testified that due to concerns about the age and medical conditions of the paternal grandparents, she did not believe that they could properly care for the baby without assistance from Plaintiff Father. Defendant Mother believes that [redacted]'s paternal grandmother is unable to lift him at his current weight. [redacted]'s paternal grandfather is in failing health, and, according to Plaintiff Father, has been diagnosed with cancer. Defendant Mother also indicated that since neither grandparent drives or speaks English, she is concerned about [redacted] in the event of an emergency. Defendant Mother also expressed some concern about paternal grandmother's use of anti-psychotic medication, but it is not clear as to the extent of her psychological issues, if any.

B. "If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;" R.C. 3109.04(F)(1)(b).

The Court did not conduct an interview of the child in chambers, and neither parent requested an in-camera interview.

C. The child's interaction and interrelationship with his parents, siblings, and any other person who may significantly affect the child's best interest; R.C. 3109.04(F)(1)(c).

Both parents gave testimony demonstrating that they are very bonded to their child and show genuine love and affection for [redacted]. Although [redacted] is only one year old, he has had the opportunity to spend a good deal of time with both his maternal and paternal grandparents. [redacted]'s maternal grandparents have visited from Dubai, and his paternal grandparents from Pakistan, are currently staying with the Plaintiff Father.

Defendant Mother does not have relatives in the area, but she testified that she has made efforts to establish a support system and network of friends, including participating in "playgroups" with Ishaq, and joining parenting and cultural groups.

D. The child's adjustment to the child's home, school, and community; R.C. 3109.04(F)(1)(d).

Ishaq has been cared for at home since his birth with Defendant Mother as the primary caregiver. Both parties have residences located close to each other, within a few minutes of the Gahanna police station. Defendant Mother testified that Ishaq is well fed, well clothed and happy. Ishaq is established with a pediatrician. Defendant Mother has joined play groups and culture programs with Ishaq.

E. The mental and physical health of all persons involved in the situation; R.C. 3109.04(F)(1)(e).

There are no health concerns evidenced in the record regarding either child or their parents. Plaintiff Father testified that he had concerns about scratches the child had on his face alleging that the scratches were due to Defendant Mother's failure to properly clip the child's nails.

F. The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights; R.C. 3109.04(F)(1)(f).

The Court finds that the Defendant Mother is more willing to honor and facilitate the Plaintiff Father's parenting time rights. Defendant Mother testified that she did not always feel that Plaintiff Father exercised the best care for their son during his parenting time, but has continued to follow the Court ordered parenting time. Defendant Mother has continued her efforts to communicate to Plaintiff Father the important information

with respect to [redacted] including his health, nutritional needs, and developmental milestones, despite Plaintiff Father's self-serving rebuffs and critical responses. Defendant Mother testified to a certain degree of reluctance to allow parenting time in excess of the court ordered time, recalling that she did not grant Plaintiff Father additional parenting time as Plaintiff Father had requested when his brother was in town. However, Mother further explained that she was unable to have the Guardian ad litem verify this additional parenting time, and was concerned that agreeing to additional parenting time without the Guardian ad litem's knowledge and approval in advance, that Plaintiff Father would claim that Defendant Mother failed to pick-up the child. In light of Plaintiff Father's prior actions and comportment, this refusal would be reasonable. Defendant Mother also testified that she has been late a few times for the exchanges, but has contacted the Plaintiff Father as soon as the issue arose.

In contrast, significant testimony was presented that the Plaintiff Father does not follow this Court's Orders. The Plaintiff Father testified that he did not maintain the Defendant Mother's health insurance, in violation of the Court's Temporary Orders, and did not inform Defendant Mother about the health insurance lapse. Yet, he maintained dual health coverage for himself. At the time of trial, Plaintiff Father had not yet taken the additional parenting classes he was ordered to take six months earlier. Plaintiff Father also testified that he did not remember if he turned over food stamps to the Defendant Mother as he was required to do pursuant to the Temporary Orders. He also testified that he has not paid the medical bills associated with Ishaq's birth, but further testified that he had paid some of his father's medical bills.

Of further importance, Defendant Mother provided credible testimony that Plaintiff

Father is chronically late to the parenting exchanges. Defendant Mother testified that he blames his chronic tardiness on work conflicts, and traffic. It is of great concern that Plaintiff Father does not take responsibility for his actions as evidenced by Plaintiff Father's evasive testimony and lack of credibility. Rather than take responsibility for his actions, he consistently shifts the blame to the Defendant Mother. He testified that he often leaves his residence to return his child at 9:00 p.m., and that he is aware that the exchange is 19 minutes from his house. When asked if he was on time for exchanges, Plaintiff Father stated that he has asked for the Guardian ad litem to move the exchanges to 6:30 p.m. (rather than the currently scheduled 6:00 p.m.) and for overnight parenting time. He also deflected indicating that Defendant Mother is 15-20 minutes late for exchanges.

His consistent lateness for a parenting time schedule that has been in place since June 14, 2012, (as agreed) shows not only an arrogance and disregard for the value of Defendant Mother's time, but a lack of insight as to how it negatively affects his infant son to be made to regularly wait in a public space or car for long periods of time without a valid basis. The Plaintiff Father's chronic lateness in returning the child to Defendant Mother is a further denial of Defendant Mother's parenting time.

Plaintiff Father did testify that he has agreed to parenting schedule changes in the past, citing an instance right before Ramadan when the exchange was moved to an earlier 5:00 p.m. time.

G. Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor; R.C. 3109.04(F)(1)(g).

As of February 12, 2013, Plaintiff Father had a child support arrearage in the

amount of $4,279.65. See *Defendant's Exhibit X.* Based upon the parties' testimony, Defendant Mother did not receive any financial support for the first five months after Ishaq was born, and Plaintiff Father's meager contribution consisted of one pack of diapers and several outfits. However, Plaintiff Father testified that he is the sole supporter for his parents whom live with him, and that they do not contribute to his household expenses. Plaintiff Father also testified that he has not fully paid the medical bills associated with Ishaq's birth, but he has paid some of his father's medical bills.

Further, Plaintiff Father applied for public assistance on July 3, 2012, and misrepresented that his wife and son were currently residing in his home. See *Defendant's Exhibit Y.* Plaintiff Father's lack of financial support is further worsened in light of Defendant Mother's testimony that her father provided $20,000.00 to Plaintiff Father during the short course of their marriage. Further, although the Magistrate ordered Plaintiff Father to provide any food stamps to the Defendant Mother, Plaintiff Father testified that he did not recall whether or not he did so.

H. Whether either parent previously has been convicted of or pleaded to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been adjudicated an abused child or neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the bases of an adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding, whether either parent previously has been convicted of or pleaded guilty to an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and where there is reason to believe that either parent has acted in a meaner resulting in a child being abused or a neglected child; R.C. 3109.04(F)(1)(h).

No evidence was presented on this issue.

I. Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent his or her right to visitation in accordance with an order of the court; R.C. 3109.04(F)(1)(i).

This issue was previously addressed in subsection F. above.

J. Whether either parent has established a residence, or is planning to establish a residence, outside the state; R.C. 3109.04(F)(1)(j).

Plaintiff Father testified that he and [redacted] are U.S. citizens, a focus that he emphasized throughout his testimony. Plaintiff Father was born in Pakistan, and has family in Pakistan, India and Dubai, United Arab Emirates (UAE). His parents have their permanent home in Pakistan, but are currently staying with the Plaintiff Father. Defendant Mother was born in India, and has family in India and Dubai, UAE. Her parents reside in Dubai, United Arab Emirates. Defendant Mother testified that they first met online in October 2010 on two arranged marriage web sites, and then met face-to-face in December 2010 with Defendant Mother's father's permission. Defendant Mother testified that Plaintiff Father seemed settled and ready to start a family. She further testified that she felt he was appropriate as a husband because he wanted his children to have an Islamic upbringing, was financially able to care for her, and that he wanted to return to the Middle East when the children were school age.

Defendant Mother testified that in December 2011 while she was pregnant, that Plaintiff Father made threats of abduction. They fought, and Plaintiff Father asked her to leave. He threatened that if she tried to leave the United States with the child, he would shoot her and run away.

Although these parties originally focused on a similarity of their culture, it appears that there was much disagreement about the practice of "confinement" wherein a

woman, from the time she is seven months pregnant until a minimum of 40 days after the child's birth, is in the care of her mother's family. Defendant Mother testified that she would engage in this traditional practice if she still lived at home. Defendant Mother testified that she believed Plaintiff Father felt threatened about this practice, so Defendant Mother's parents decided to come to the U.S. Defendant Mother testified that her parents came to the U.S. in January 2012 and rented an apartment; on February 25, 2012, Plaintiff Father threw her out of the house, and she moved into the apartment with her parents. There were many attempts at reconciliation including dinners at each other's houses and celebration of an anniversary. Defendant Mother relayed in her testimony that some days the Plaintiff Father was nice and sweet, and other days he was rude and mad.

Defendant Mother did testify that in an affidavit to the Court on May 1, 2012, she was requesting sole custody of [redacted] and leave of Court to return to Dubai. However, at trial she testified that her intent is not currently to leave the United States. She testified that she had a green card that allows her to be in this country on condition of marriage, which expired on March 31, 2013. Defendant Mother further testified that she has an immigration attorney, and she is working with same to get the condition of marriage removed from her green card so that she may stay in the United States. Defendant Mother is confident that she will be allowed to stay in the United States, and believes she has timely applied and is requesting permission based upon abuse by a U.S. citizen and her civil protection request.

Defendant Mother provided credible testimony that she intends to remain in the United States, acknowledged [redacted]'s need for a relationship with his Father, and

outlined her plan for supporting herself here. These plans include joining a medical transcriptionist class, and ultimately completing her residency to become a medical doctor. She also testified with respect to the cultural groups, play groups and parenting groups that she has participated in order to establish a support system and further integrate herself and Ishaq into the community. At the time of trial, no evidence was presented that she was not legally in the United States or under the threat of deportation. The Court finds Defendant Mother's testimony to be credible. No credible evidence was presented that Defendant Mother is a flight risk or that reasonable international travel with Ishaq should not be permitted.

Plaintiff Father did not present any evidence that he intends to move outside of the state. Plaintiff Father testified regarding his fears that the Defendant Mother would move outside of the United States and further testified as to what he perceived as the likelihood that Defendant Mother was going to take Ishaq and leave the United States and go to countries which may not be signatories to the Hague Convention. In his testimony, Plaintiff Father admitted that when Defendant Mother returned to her apartment from the hospital after [redacted]'s birth rather than return with him to his residence, he considered such an act as "child abduction" even though Plaintiff Father actually drove Defendant Mother and [redacted] to Defendant Mother's apartment. Plaintiff Father also admitted upon cross-examination that he has placed alerts with the U.S Department of State and Interpol, Center for Missing Children, the U.S. passport office indicating that his child is at risk of being abducted. In order for the Defendant Mother to be able to travel internationally with [redacted], Plaintiff Father would have to remove any existing barriers to international travel he has initiated, both in the United States and

abroad, and refrain from initiating any new obstacles to Ishaq's travel.

In addition to abduction alerts to state and international agencies, the Plaintiff Father also admitted that he contacted U.S. Immigration, and testified that he told immigration officials that his marriage was a sham, and that Defendant Mother only married him for a green card. Plaintiff Father also testified that he destroyed Defendant Mother's green card, and other forms of her identification. Plaintiff Father reiterated to this Court on many occasions that he was a naturalized citizen, and clearly believes that this designation provides a basis for him to obtain sole custody of this child. Plaintiff Father's actions further indicate that he believes Defendant Mother should be deported. During the marriage, there was significant conflict about Defendant Mother's identification, particularly her green card which documented that she was legally within the country. Defendant Mother testified that she was often asked to leave the marital residence, but that Plaintiff Father would not provide her with her identification when she asked for it.

K. Other Relevant Evidence

1. Communication between the Parents: Defendant Mother has continued attempts to communicate with Plaintiff Father despite Plaintiff Father's physical and emotional abuse. Plaintiff Father clearly rebuffs Defendant Mother when she attempts to relay pertinent information as to [redacted]. It appears that Plaintiff Father's sole focus is Defendant Mother's lack of citizenship and his anger at her, rather than providing a conducive environment of respect to encourage Defendant Mother to openly engage with him and facilitate co-parenting. Plaintiff Father simply cannot cooperate with Defendant Mother despite her on-going efforts to do so. It is incumbent upon Plaintiff

Father to reconsider the effects of his behavior upon his child, as well as the effects upon his parenting time. Clearly, Plaintiff Father has the ability to encourage the sharing of love, affection, and contact between the child and the other parent, but it is unclear if he is willing to do so.

Plaintiff Father testified that he does not want to continue to exchange [redacted] at the Gahanna Police Station, yet Defendant Mother testified with regard to Plaintiff Father's erratic behavior at exchanges, including telling people in the parking lot that this was an international abduction case. Defendant Mother also testified that at a recent exchange that when [redacted] began to cry that Defendant Mother attempted to comfort [redacted] by patting his head and speaking to him, Plaintiff Father smacked Defendant Mother's hand away.

2. <u>Any history of, or potential for, child abuse, spouse abuse, other domestic violence, or parental kidnapping by either parent:</u>

In his narrative testimony, Plaintiff Father made several allegations that Defendant Mother falsified a lot of information, but he was not specific as to what she falsified other than the Defendant Mother had filed a petition for a civil protection order (which was granted). He also testified that there had been an abduction threat, but he failed to present any evidence to support this perception. In fact, Plaintiff Father was often evasive and not credible during much of his testimony.

Defendant Mother testified as to Plaintiff Father's controlling behaviors. She testified that she felt as though she was "under house arrest" – stating that Plaintiff Father controlled everything including finances, phone, computer, and car keys. During the marriage when Defendant Mother was still living with the Plaintiff Father, and his parents were also residing there, Defendant Mother testified that Plaintiff's father kept

the house keys and his mother kept the car keys if Plaintiff Father was not present. Defendant Mother testified that she had no access outside the house unless a neighbor took her out, which was rare. She also testified that Plaintiff Father would often tell her to leave the house, and she would ask for her identification, and Plaintiff Father would refuse to provide same. Plaintiff Father continually accused Defendant Mother of marrying for a green card.

Defendant Mother testified that Plaintiff Father physically abused her on two occasions during the marriage. Defendant testified that August 28, 2011, was the first time Plaintiff hit her. He threw her laptop, pushed her against a wall and told her to leave. On January 20, 2012, Defendant Mother testified that Plaintiff Father asked for her passport, and she asked for her green card in return. He began screaming at her, hit her, slapped her, and pushed her on the bed. She recalled that he was screaming at her that her father would not give him the money he had requested. At this time she was 30 weeks pregnant, and she was sent to the hospital for observation.

3. Recommendation of the guardian ad litem of the child: The Guardian ad litem issued her interim recommendation and report on February 20, 2013. She participated in the trial of this matter, and was available for cross-examination, yet neither party called her to testify. She filed her *Final Report and Recommendation of Guardian ad Litem* on March 29, 2013. The Court has thoroughly reviewed each report and recommendation.

In Plaintiff Father's narrative testimony, he testified that he felt that the guardian ad litem was too biased.

VII. CHILD SUPPORT AND HEALTH INSURANCE

Plaintiff Father testified that he worked for Teksystems since 2006 as a system

administrator/IT engineer. He was paid $17.00 per hour, and received some overtime, usually only in December on weekends. For 2010, his W-2 reflected annual earnings of $46,150.25, and ordinary dividends of $200.00. See *Defendant's Exhibit A.* Plaintiff Father's federal tax return for 2010 included a schedule C for his business of selling used cars. Plaintiff indicated that he sold one car in 2012, and that he has three cars parked in Zanesville, Ohio where his business is sited. Plaintiff Father testified that this car business has not earned a profit since 2003. Plaintiff Father's W-2 for 2011 reflected earnings of $43,900.00 per year. See *Defendant's Exhibit C.* Plaintiff Father indicated that the lower annual earnings were due to less overtime worked. Plaintiff Father did not file a 2011 tax return citing too much stress in his life. However, he also testified that he receives a tax refund each year, and will likely receive a refund on his 2011 return.

Plaintiff Father also testified that his employer, Teksystems, "let him go" in May of 2012; he indicated that because of his fear that Defendant Mother would take off with the child and stress, he was not performing well. He was also late and calling off work. He earned $17,578.00 for January 2012 through August 2012 from Teksystems, and $14,939.00 (regular earnings of $13,059.50 at $19.00 per hour plus overtime in the amount of $1,879.50) for August 2012 through December 2012 from K-Force, his current employer. See *Defendant's Exhibit D and E.* Plaintiff also had dividend income of $76.98 for 2012. See *Defendant's Exhibit K.* Plaintiff Father also testified that he received unemployment compensation in the amount of $448.00 weekly. See also *Defendant's Exhibit Y.* At the time of trial, Plaintiff Father testified that he was earning $19.00 per hour and working 40 hours per week. The Court finds that Plaintiff's income

annual income is $39,520.00. Although Plaintiff did have some overtime income for 2013 as of February 3, 2013, in the amount of $370.50 (YTD), there was no testimony as to what Plaintiff anticipated he would earn in overtime income. See *Defendant's Exhibit F.* In addition, Plaintiff Father earned overtime at KForce for 2012 in the amount of $1879.50. See *Defendant's Exhibit E.* No evidence was presented as to overtime income for 2011. The Court finds that the three year average for bonus income for Plaintiff is $626.50. Plaintiff testified that he receives a dividend check quarterly, each in the amount of $76.78, for a total of $307.92 per year. See *Defendant's Exhibit K.*

Plaintiff Father testified that he also owns several businesses, including an auto sales business in Zanesville. Plaintiff testified that all his businesses are either inactive, are having financial problems, or operate at a loss, and have done so since their inception. No competent credible evidence was provided that Plaintiff Father had additional income from said businesses.

Plaintiff Father testified that health insurance was available to him through his employer, and that the costs of health insurance for Medical Mutual were $150.00 per month for himself and [redacted], and $75.00 per month for him, individually. However, this testimony conflicted with the prior day's testimony where Plaintiff Father testified that he had Aetna health insurance through his employer. Plaintiff Father later testified that he incorrectly testified as to his insurance provider. The Court also finds that the Plaintiff Father's pay stubs from 12/30/2012 through 02/08/2013 reflect *Aetna* health benefits deductions of $45.44 per pay. See Defendant's Exhibit F. [With $45.44 per month in health insurance benefits for Plaintiff Father and [redacted] X 26 pays = $1,181.44.] Accordingly, the Court will attribute one-half of this aggregate amount, or $590.72 for

's health insurance coverage for child support purposes.

The Defendant Mother is currently unemployed. She is working toward completing a course in medical transcription. Defendant Mother testified that she would also like to be able to take her medical exams and get a residency position. She testified that she worked as a resident in OB/GYN for three years in Germany and Dubai prior to her marriage to Plaintiff Father.

Plaintiff Father testified that he threw away Defendant Mother's green card because she threatened to leave the country. Defendant Mother testified that Plaintiff Father destroyed other forms of her identification. When Plaintiff Father was questioned if he took any action in assisting his wife in straightening out her green card, he was non-responsive in his answer, responding that he believes "this was a sham marriage." He denied that he took any active steps to keep his wife from staying in the U.S., but he did testify that he contacted the Immigration Department in October of 2012 and told them about the divorce, civil protection order, and that the marriage was a fraud by Defendant Wife.

The Court finds that Plaintiff Father did not provide child support to Defendant Mother during the pendency of the litigation until he was ordered by the Court to specifically do so within the Temporary Orders filed by this Court on September 27, 2012, with an effective date of April 17, 2012.

VIII. FINAL ORDERS

It is hereby **ORDERED, ADJUDGED AND DECREED** that the marriage contract heretofore existing between Plaintiff and Defendant is **TERMINATED,** and both parties

are released from the obligations of the same. Both parties are granted a divorce on the grounds of incompatibility, not denied. *See* R.C. 3105.01(K).

A. ASSETS AND LIABILITIES: The Court adopts the findings and agreements contained in the document titled "Agreed Stipulation" filed with this court on December 3, 2012 as if fully rewritten herein, incorporates the Stipulation by reference, and makes the same an order of this Court. The Duration of the Marriage shall be from March 31, 2011 until February 28, 2013. The effective date of the *Agreed Stipulation* is December 3, 2012, unless otherwise specified therein. Any property acquired by either party after their December 3, 2012, Stipulation Regarding Property, if any, is hereby awarded to the party who acquired the property.

B. SPOUSAL SUPPORT: Pursuant to the Agreed Stipulation, neither party shall pay spousal support to the other, and the Court shall not retain jurisdiction to modify either the amount or duration of this award, except as set forth in the paragraph herein entitled *"Discharge in Bankruptcy, Reservation of Jurisdiction."*

C. ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES:

Defendant Mother is designated the residential parent and legal custodian of the parties' minor child, [redacted], subject to the parenting time of the Father, and other rights as delineated below. [redacted] shall be with the Defendant Mother at all times he is not with the Plaintiff Father.

1. **Effective upon the filing of this Judgment Entry-Decree of Divorce until [redacted]'s attainment of his 2nd birthday on April 3, 2014, Plaintiff Father shall have parenting time with [redacted], as follows:**

a. Every Tuesday and Thursday evening from 6:00 p.m. until 9:00 p.m.;
b. Every Saturday evening from 6:00 p.m. until Sunday at 6:00 p.m.;

c. All other times as agreed upon between the parties, as evidenced in writing.

2. Effective upon [redacted]'s 2nd birthday on April 3, 2014, Plaintiff Father shall have parenting time as follows:

a. Every Tuesday evening from 6:00 p.m. until 9:00 p.m.;
b. Every other weekend beginning Friday at 6:00 p.m. and continuing until Sunday at 6:00 p.m.;
c. All other times as agreed upon between the parties and in writing;
d. Holidays (includes birthdays): The parties shall follow the holiday schedule in accordance with Local Rule 27, attached and incorporated herein as *Court's Exhibit B.* However, the parties shall not exercise Spring Break, Winter Break, or Summer parenting time until Ishaq begin attending kindergarten.
e. Vacations: Each parent may arrange an uninterrupted vacation of not more than 8 days with the child during the summer with thirty days written notice to the other parent, except that international travel shall be addressed separately herein. A general itinerary of the vacation shall be provided for the other parent, including dates, locations, addresses, and telephone numbers. Holiday and birthday celebrations with either parent shall not be missed, requiring scheduling of the vacation around these events or that the missed occasion be made up. If alternate weekend parenting time with the other parent is missed during vacation, there is no requirement that it be made up.

f. Summer: Once [redacted] begins attending kindergarten, the parties shall have summer parenting time. The summer school vacation shall commence the day after the child is out of school and shall continue until seven (7) days before school begins. The parents shall alternate weeks with [redacted], beginning the first full weekend of the summer with whichever parent's weekend it is in the rotation. They shall exchange the child each Friday at 6:00 p.m. The parent whose week it is not, shall have parenting time with [redacted], Tuesday from 6:00 p.m. until 9:00 p.m.

g. Extracurricular Activities: Regardless of where the child is living, his participation in existing and renewed extracurricular activities, school related or otherwise, shall continue uninterrupted. The parent exercising parenting time shall provide transportation to extracurricular activities. Defendant shall make the final decision for all activities. Plaintiff shall pay 50% of the cost of extracurricular activities for which he agreed the child should be enrolled.

3. Parenting Seminar: The Court finds that both parents have completed the required parenting course as required by the local rules. However, the Court further finds that Plaintiff Father has failed to complete the "Parenting Separately" parenting

class at the Elizabeth Blackwell Center with Dr. Yvonne Gustafson as ordered by the Magistrate on September 27, 2012. The Court orders that Plaintiff Father's parenting time shall be suspended until this requirement is met, and a certificate of completion is filed with the Court and provided to Defendant Mother and the Guardian ad litem.

4. **Transportation:** Until the parties agree otherwise to a permanent change in location, in writing, they shall continue to exchange the minor child inside the building of the Gahanna Police Department, which is located at 460 Rocky Fork Boulevard, Gahanna, Ohio 43230. If Defendant Mother is to be more than fifteen minutes late to the exchange, she shall notify the Plaintiff Father by telephone call or text message. Because Father has established a pattern of tardiness, if he fails to pick up Ishaq more than 15 minutes late of the scheduled exchange time, his parenting time is forfeited and shall not be made up. It is inherent in this order that the Plaintiff Father needs to plan to timely arrive at the court ordered exchange time with consideration of traffic and his work schedule.

5. **Communication between the Parents:** Unless the parties agree to a change to this provision in writing, all non-emergency communication between Plaintiff and Defendant shall be via email or text message. If the parties make an agreement to begin verbal communications, and one of the parties later changes his or her mind and notifies the other in writing, the parties shall resume communicating all non-emergency matters via email or text message. Neither party shall harass the other party at home or at his or her place of employment. Neither party shall disparage the other in front of the child, and neither shall allow other persons to disparage the other parent in their home while the child is present.

6. **International Travel:** The parties shall cooperate in facilitating reasonable international travel for the child, including, but not limited to completion of applications for a passport, renewed passport and visas. However, the minor child shall not travel outside of the United States without written consent of the non-traveling parent, or court order. Consent to travel shall not be unreasonably withheld by either parent.

The parents shall cooperate to obtain and keep current a valid United States Passport for their minor child, [redacted]. The parties shall divide equally the cost associated with obtaining or renewing a passport. When not in use, the Guardian ad Litem shall hold and secure [redacted]'s passport. She shall not withhold his passport from either party for any agreed upon or court ordered international travel including for the purposes of obtaining a Visa for said travel. Upon Ishaq's return from any agreed upon or court-ordered international travel, his passport shall be immediately returned to the Guardian ad Litem's possession.

The parent proposing travel with [redacted] shall give the other parent at least forty-five days written notice of his or her intention to travel. This written notice shall include details of the travel with dates, flight information, accommodations, contact information, full itinerary, etc. The other parent shall give a written response to the proposing parent within seven (7) days regarding whether he or she consents to said travel plans with the minor child. If consent is given, the parent shall immediately effectuate said consent by signing all documents and taking all actions necessary to facilitate the travel. Neither parent shall notify any entity, government or otherwise, accusing the other parent of abduction of the child when the non-traveling parent has agreed to the international travel of the minor child, or a court order has been obtained permitting same.

In the event the other parent withholds consent to a proposed travel plan, either by failing to provide written permission within seven (7) days, or once consent is given fails to cooperate in facilitating the travel, the parent desiring international travel may file a motion with this Court seeking to authorize the specific proposed travel plan, and request that said motion be heard upon an expedited basis.

If the parties agree to international travel or the Court orders it, each parent shall be entitled to additional vacation to accommodate the travel. The Court is cognizant that international travel may require a minimum of three (3) weeks of parenting time, and more likely four (4) weeks of parenting time. Although vacation time is not required to be made up, the Court requests that the traveling parent attempt to facilitate additional parenting time for the non-traveling parent upon return from an international trip. The parent exercising international travel may not exercise additional regular vacation time without the consent of the other parent.

Once the parties have agreed to an international trip for the traveling parent and minor child evidenced by writing or upon Court Order, the non-traveling parent shall take all actions necessary to facilitate the travel including, but not limited to, refraining from contacting any state, governmental, or international agencies alleging abduction of the child, or contacting said agencies to remove or rescind any prior allegations or notifications alleging abduction of the child.

7. **Access:** Mother and Father shall exert every reasonable effort to maintain free access and unhampered contact between each of the parents and the child. Once Ishaq is of reasonable age, he shall be allowed to communicate by telephone, text messages, instant messaging, e-mail or other electronic communication regularly with

both parents, regardless of with whom he is currently residing. The minor child may initiate calls to the parent with whom he is not currently residing, and further, neither parent shall impede the child from making calls to the other parent.

8. **Tax Dependency Exemption:** Based upon the considerations of R.C. 3119.82, particularly in light of the financial circumstances of each party with Plaintiff Father earning an income and Defendant Mother with no actual income, and the net tax savings, the Court awards the income tax dependency exemption to Plaintiff Father, so long as he is substantially current in his child support obligation.

   When Defendant Mother's adjusted gross income exceeds the amount to qualify for the Earned Income Tax Credit, Defendant Mother shall be entitled to claim the income tax dependency exemption for the minor child in that year. The parties shall thereafter alternate the tax dependency exemption each year. Both parties shall cooperate and provide all signed IRS forms to the other party to effectuate this provision on an annual basis, no later than March 15th of each year.

9. **Cooperation between the Parents:** Each parent shall have the right to participate and consult in all major decisions affecting the welfare of [redacted], including matters affecting the health, social development, welfare, and education. If the parents are unable to communicate face-to-face without the child present, they shall discuss these issues via e-mail or other electronic means. This right shall include, but is not limited to, consultation with any treating doctor, dentist, orthodontist, mental health provider, teacher, or other person who significantly impacts the minor child. If the parents cannot agree as to the course of action that should be taken in any of the above areas, then Defendant Mother shall make the final decision as the residential parent and legal

custodian of the minor child.

10. **Health Care:** Defendant Mother shall be primarily responsible for scheduling health care related appointments for [redacted]. She shall notify Plaintiff Father of any and all appointments in writing via e-mail or text message so that Plaintiff Father may attend. If Plaintiff Father does not attend said appointments, Mother shall provide reasonable updates as to the outcome of the appointment to Plaintiff Father. Each party shall have access to [redacted]'s medical records and/or counseling records. In the event of an emergency, the parent exercising parenting time shall immediately notify the other parent by phone or text.

11. **Miscellaneous:** Each parent shall keep the other parent informed of his/her current address and telephone number at all times. Plaintiff Father shall return all clothing, medicines and items that [redacted] arrived with at the beginning of his parenting time to the Defendant Mother at the end of his parenting time. Both parties shall make sure that the child is transported with an appropriate car seat that is installed and used correctly. The parties shall exchange the car seat with the child if one party does not have an appropriate car seat.

E. CHILD SUPPORT, CASH MEDICAL SUPPORT & PRIVATE HEALTH INSURANCE

The Court finds that Plaintiff Father has accessible private health insurance available to him at a reasonable cost. Plaintiff Father shall provide private health insurance for the benefit of the child for so long as the duty of support is in effect or until further order of the Court. In the event that [redacted]'s health insurance is modified or terminated, Plaintiff Father shall notify Defendant Mother of same in writing within

48 hours of the modification or termination. [redacted]'s current medical card and/or health insurance information shall be exchanged with him at each parenting exchange.

Pursuant to R.C.3119.30(A), both parents are liable for the health care of the children who are not covered by private health insurance or cash medical support as calculated in accordance with section 3119.022 or 3119.023 of the Revised Code, as applicable.

1. Effective March 1, 2013, when health insurance is provided, Plaintiff Father shall pay child support of $544.46, per month, plus 2% processing charge in the amount of $10.89, for a total of $555.35 in child support per month pursuant to the child support guidelines. Effective March 1, 2013, when health insurance *is **not** provided*, Plaintiff Father shall pay child support of $544.46, per month, plus 2% processing charge in the amount of $10.89, plus $75.00 in cash medical support per month, plus 2% processing charge of $1.50, for a total of $631.85 in child support per month pursuant to child support guidelines. See *Court's Exhibit C.* Based upon Defendant Mother's evidence and a review of the deviation factors, the Court finds that the only applicable factor is the disparity of income pursuant to R.C. 3119.23, as the Plaintiff Father currently earns approximately $40,000.00 and the Defendant Mother is not currently employed. However, the Court finds that a deviation upward is not warranted at this time, and the guideline amount of child support is in the child's best interests.
2. Effective March 1, 2013, when private health insurance is in effect, Plaintiff Father shall pay 90% and Defendant Mother shall pay 10% of all extraordinary medical and

other health care expenses for the child, which are defined as uncovered medical and other health care expenses exceeding $100.00 per child per calendar year. Defendant Mother shall pay the ordinary medical and other health care expenses for the child, which are defined as uncovered medical and other health care expenses up to $100.00 per year. Further, effective March 1, 2013, when private health insurance is ***not*** in effect, Plaintiff Father shall pay 90% and Defendant Mother shall pay 10% of all extraordinary medical and other health care expenses for the child, which are defined as all medical and other health care expenses exceeding the amount paid by the obligor for cash medical support per calendar year.

The Court further finds that Plaintiff Father has a child support arrearage in the amount of $4,279.65 as of February 21, 2013. See Defendant's Exhibit X. The arrearages shall be incorporated and maintained within this Judgment Entry –Decree of Divorce. Plaintiff Father shall liquidate the arrearage by an additional monthly payment of 20% of the current monthly child support order. Defendant Mother shall forthwith submit an appropriate withholding order (Form 1) to this Court in accordance with this Court's Decision herein.

It is further ordered:

If the obligor is ordered to pay cash medical support under this support order, the obligor shall begin payment of any cash medical support on the first day of the month immediately following the month in which private health insurance coverage is unavailable or terminates and shall cease payment on the last day of the month immediately preceding the month in which private health insurance coverage begins or resumes. During the period when cash medical support is required to be paid, the

obligor or obligee must immediately inform the child support enforcement agency that health insurance coverage for the child has become available.

The amount of cash medical support paid by the obligor shall be paid during any period after the court or child support enforcement agency issues or modifies the order in which the children are not covered by private health insurance.

Any cash medical support paid pursuant to R.C. 3119.30 (C) shall be paid by the obligor to either the obligee if the children are not Medicaid recipients, or to the office of child support to defray the cost of Medicaid expenditures if the children are Medicaid recipients. The child support enforcement agency administering the court or administrative order shall amend the amount of monthly child support obligation to reflect the amount paid when private health insurance is not provided, as calculated in the current order pursuant to section 3119.022 or 3119.02 of the Revised Code, as applicable.

The child support enforcement agency shall give the obligor notice in accordance with Chapter 3121 of the Revised Code and provide the obligor an opportunity to be heard if the obligor believes there is a mistake of fact regarding the availability of private health insurance at a reasonable cost as determined under division (B) of this section.

Said support obligation for each child shall continue until the child attains the age of eighteen (18) or dies, marries, or otherwise is emancipated, whichever event shall occur first. In the event that the child shall reach the age of eighteen (18) and not otherwise be emancipated and continue to attend an accredited high school on a full time basis then said child support payments shall continue for so long as full time high school attendance is sustained by the child and the child is not otherwise emancipated

under the laws of Ohio. If the minor child has obtained the age of eighteen (18) and continues to attend an accredited high school on a full time basis the obligation to pay child support shall nonetheless terminate in all respects upon the child turning age nineteen (19).

STATUTORY NOTICES

EACH PARTY TO THIS SUPPORT ORDER MUST NOTIFY THE CHILD SUPPORT ENFORCEMENT AGENCY IN WRITING OF HIS OR HER CURRENT MAILING ADDRESS, CURRENT RESIDENCE ADDRESS, CURRENT RESIDENCE TELEPHONE NUMBER, CURRENT DRIVER'S LICENSE NUMBER, AND OF ANY CHANGES IN THAT INFORMATION. EACH PARTY MUST NOTIFY THE AGENCY OF ALL CHANGES UNTIL FURTHER NOTICE FROM THE COURT OR AGENCY, WHICHEVER ISSUED THE SUPPORT ORDER. IF YOU ARE THE OBLIGOR UNDER A CHILD SUPPORT ORDER AND YOU FAIL TO MAKE THE REQUIRED NOTIFICATIONS YOU MAY BE FINED UP TO $50 FOR A FIRST OFFENSE, $100 FOR A SECOND OFFENSE, AND $500 FOR EACH SUBSEQUENT OFFENSE. IF YOU ARE AN OBLIGOR OR OBLIGEE UNDER ANY SUPPORT ORDER ISSUED BY A COURT AND YOU WILLFULLY FAIL TO GIVE THE REQUIRED NOTICES, YOU MAY BE FOUND IN CONTEMPT OF COURT AND BE SUBJECTED TO FINES UP TO $1000 AND IMPRISONMENT FOR NOT MORE THAN 90 DAYS.

IF YOU ARE AN OBLIGOR AND YOU FAIL TO MAKE THE REQUIRED NOTICES, YOU MAY NOT RECEIVE NOTICE OF THE FOLLOWING ENFORCEMENT ACTIONS AGAINST YOU: IMPOSITION OF LIENS AGAINST YOUR PROPERTY; LOSS OF YOUR PROFESSIONAL OR OCCUPATIONAL LICENSE, DRIVER'S LICENSE, OR RECREATIONAL LICENSE; WITHHOLDING FROM YOUR INCOME; ACCESS RESTRICTION AND DEDUCTION FROM YOUR ACCOUNTS IN FINANCIAL INSTITUTIONS; AND ANY OTHER ACTION PERMITTED BY LAW TO OBTAIN MONEY FROM YOU TO SATISFY YOUR SUPPORT OBLIGATION.

The residential parent or the person who otherwise has custody of child for whom a support order is issued is also ordered to immediately notify, and the obligor under a support order may notify, the Franklin County Child Support Enforcement Agency of any reason for which the support order should terminate, including but not limited to, the children's attainment of the age of majority, if the child no longer attends an accredited high school on a full-time basis and the child support order requires support to continue past the age of majority only if the child continuously attend such a high school after attaining that age; the child ceasing to attend an accredited high school on a full time basis after attaining the age of majority, if the child support order requires support to continue past the age of majority only if the child continuously attend such a high school after attaining that age; or the death, marriage, emancipation, enlistment in the armed services, deportation, or change of legal custody of the child.

All support under this order shall be withheld or deducted from the income or assets of the obligor pursuant to a withholding or deduction notice or appropriate order issued in accordance with Chapter 3119, 3121, 3123, and 3125 of the Revised Code or a withdrawal directive issued pursuant to Sections 3213.24 to 3123.38 of the Revised Code and shall be forwarded to the oblige in accordance with Chapters 3119, 3121, and 3125 of the Revised Code.

Regardless of the frequency or amount of support payments to be made under the order, the Ohio Support Processing Center shall administer it on a monthly basis in accordance with Sections 3125.51 to 3121.54 of the Revised Code.

Payments under the order are to be made in a manner ordered by the court or agency, and if the payments are to be made other than on a monthly basis, the required monthly administration by the agency does not affect the frequency or the amount of the support payments to be made under the order.

RELOCATION NOTICE: Pursuant to O.R.C. 3109.051(G), the parties hereto are hereby notified as follows:

IF THE RESIDENTIAL PARENT, INTENDS TO MOVE TO A RESIDENCE OTHER THAN THE RESIDENCE SPECIFIED IN THE PARENTING TIME ORDER OR DECREE OF THE COURT, THE RESIDENTIAL PARENT SHALL FILE A NOTICE OF INTENT TO RELOCATE WITH THIS COURT, ADDRESSED TO THE ATTENTION OF THE RELOCATION OFFICER. UNLESS OTHERWISE ORDERED PURSUANT TO O.R.C. SECTIONS 3109.051(G)(4), A COPY OF SUCH NOTICE SHALL BE MAILED BY THE COURT TO THE PARENT WHO IS NOT THE RESIDENTIAL PARENT. UPON RECEIPT OF THE NOTICE, THE COURT, ON ITS OWN MOTION OR THE MOTION OF EITHER PARTY, MAY SCHEDULE A HEARING WITH NOTICE TO BOTH PARTIES TO DETERMINE WHETHER IT IS IN THE BEST INTEREST OF THE CHILD TO REVISE THE PARENTING TIME SCHEDULE.

RECORDS ACCESS NOTICE: Pursuant to O.R.C. 3109.051 (H) and 3319.321(B)(5)(a) the parties hereto are hereby notified as follows:

EXCEPTING AS SPECIFICALLY MODIFIED OR OTHERWISE LIMITED BY COURT ORDER, AND SUBJECT TO O.R.C. SECTIONS 3125.16 AND 3319.321 (F), THE PARENT WHO IS NOT THE RESIDENTIAL PARENT, IS ENTITLED TO ACCESS TO ANY RECORD THAT IS RELATED TO THE CHILD, UNDER THE SAME TERMS AND CONDITIONS AS THE RESIDENTIAL PARENT, AND TO WHICH SAID RESIDENTIAL PARENT IS LEGALLY PROVIDED ACCESS. ANY KEEPER OF A RECORD WHO KNOWINGLY FAILS TO COMPLY WITH THIS ORDER IS IN CONTEMPT OF COURT.

DAY CARE CENTER ACCESS NOTICE: Pursuant to Ohio Revised Code Sections 3109.051(I), the parties hereto are hereby notified as follows:

EXCEPTING AS SPECIFICALLY MODIFIED OR OTHERWISE LIMITED BY COURT ORDER, AND IN ACCORDANCE WITH O.R.C. SECTION 5104.011, THE PARENT WHO IS NOT THE RESIDENTIAL PARENT, IS ENTITLED TO ACCESS TO ANY DAY CARE CENTER THAT IS OR WILL BE ATTENDED BY THE CHILD WITH WHOM PARENTING TIME IS GRANTED, TO THE SAME EXTENT THAT, THE RESIDENTIAL PARENT, IS GRANTED ACCESS TO THE CENTER.

SCHOOL ACTIVITIES NOTICE: Pursuant to Ohio Revised Code Section 3109.051(J), the parties hereto are hereby notified as follows:

EXCEPTING AS SPECIFICALLY MODIFIED OR OTHERWISE LIMITED BY COURT ORDER, AND SUBJECT TO O.R.C. SECTION 3319.321 (F), THE PARENT WHO IS NOT THE RESIDENTIAL PARENT, IS ENTITLED TO ACCESS, UNDER THE SAME TERMS AND CONDITIONS AS, THE RESIDENTIAL PARENT, TO ANY STUDENT ACTIVITY THAT IS RELATED TO THE CHILD AND TO WHICH THE RESIDENTIAL PARENT OF THE CHILD LEGALLY IS PROVIDED ACCESS. ANY SCHOOL EMPLOYEE OR OFFICIAL WHO KNOWINGLY FAILS TO COMPLY WITH THIS ORDER IS IN CONTEMPT OF COURT.

Should the health insurance coverage be cancelled for any reason, the parent ordered to maintain insurance shall immediately notify the other parent and take immediate steps to obtain replacement coverage. Unless the cancellation was intentional, the uncovered expenses shall be paid as provided above. If the cancellation was intentionally caused by the parent ordered to maintain insurance coverage, that parent shall be responsible for all health care expenses that would have been covered had the insurance been in effect.

F. Restoration of Former Name: Defendant Mother's name shall be changed from

SAKHI S. IBRAHIM to **SAKHI SHAMSUDDEEN BEERU.**

G. Self-Executing Clause

Upon the failure of either party to execute and deliver any such deed, conveyance, title, certificate or other document or instrument of transfer to the other party, this Judgment Entry/Decree of Divorce shall constitute and operate as such properly executed document, and the County Auditor, Clerk of Courts, County Recorder, and any and all private officials, private persons or public officials are hereby authorized and directed to accept this Judgment Entry/Decree of Divorce or a properly

certified copy thereof in lieu of the document regularly required for such conveyance or transfer.

H. Other Orders:

All temporary orders, including but not limited to the child support arrearages and all hospital bills relating to Ishaq's birth, shall be paid in full and incorporated herein through the effective date of this Decree. The effective date of this Decree is the filing date, unless otherwise provided.

All temporary restraining orders are dismissed.

Any motions before the Court not specifically addressed herein are denied.

Pursuant to the parties' Agreed Stipulation of December 3, 2012, the Plaintiff Father and Defendant Mother shall equally divide the balance of court costs, if any.

IT IS SO ORDERED.

See Attached Signature Page
JUDGE MASON

PRAECIPE: TO THE CLERK OF COURTS
Pursuant to Civil Rule 58(B), you are hereby instructed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal.

Plaintiff, Pro Se
Defendant, Pro Se
Kristy Swope, Guardian ad litem

Franklin County Court of Common Pleas

Date: 07-11-2013

Case Title: HANIF IBRAHIM -VS- SAKHI IBRAHIM

Case Number: 12DR001670

Type: DIVORCE DECREE

Jim Mason, Judge

Jim Mason

Franklin County Ohio Clerk of Courts of the Common Pleas- 2013 Jul 11 2:24 PM-12DR001670

Court Disposition

Case Number: 12DR001670

Case Style: HANIF IBRAHIM -VS- SAKHI IBRAHIM

Case Terminated: 05 - Judge: Default, Uncontested, Dissolution

Final Appealable Order: Yes

Franklin County Ohio Court of Appeals Clerk of Courts- 2013 Dec 05 12:14 PM-13AP000681

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Hanif Ibrahim,	:	
Plaintiff-Appellant,	:	
v.	:	No. 13AP-681 (C.P.C. No. 12DR-1670)
Sakhi Ibrahim,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on December 5, 2013

Elizabeth N. Gaba, for appellant.

Law Offices of Virginia C. Cornwell, and *Virginia C. Cornwell*, for appellee.

Swope & Swope, and *Kristy Swope*, Guardian ad Litem.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations

TYACK, J.

{¶ 1} Hanif Ibrahim is appealing from portions of his divorce decree. His counsel assigns three errors for our consideration:

> 1. The trial court erred to the prejudice of Appellant in awarding sole custody of [redacted] to Sakhi, placing no restrictions on her relocation with the child, and forcing Hanif to sign for a passport for [redacted] and requiring Hanif to agree to [redacted] traveling with Sakhi out of the country, and in particular to Dubai. This error is of Constitutional dimension. It deprives Hanif of his right to association with his child and to be free from a deprivation of substantive due process of law in violation of Hanif's 1st, 4th, 9th and 14th Amendments rights, and further deprives him of his rights to equal protection of the courts in violation of the 1st and 14th Amendments, and his rights under the Ohio Constitution. It

EXHIBIT 2

Franklin County Ohio Court of Appeals Clerk of Courts- 2013 Dec 05 12:14 PM-13AP000681

> deprives [redacted] for his right to association with his father and to be free from a deprivation of substantive due process of law in violation of [redacted]s 1st, 4th, 9th and 14th Amendments rights, and further deprives him of his rights to equal protection of the courts in violation of the 1st and 14th Amendment, and his rights under the Ohio Constitution.
>
> 2. The trial court erred to the prejudice of Appellant in awarding sole custody of [redacted] to Sakhi, placing no restrictions on her relocation with the child, and forcing Hanif to sign for a passport for [redacted] and requiring Hanif to agree to [redacted] traveling with Sakhi out of the country, and in particular to Dubai. This award to Sakhi, and lack of restrictions on Sakhi were not supported by the evidence and are not in the best interest of the child.
>
> 3. The trial court erred to the prejudice of Appellant in awarding sole custody of [redacted] to Sakhi, rather than shared parenting to both parties, on the basis that neither party had filed a shared parenting plan. The parties filed an Agreed shared parenting plan on June 14, 2012. To interpret the statute otherwise is to permit the selective or discriminatory enforcement of a Sec. 3109.04(A)(1), in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as well as the Due Course of Law Provision and Article I Section 16 of the Ohio Constitution. To interpret the statute otherwise means that sec. 3109.04(A)(1) is unconstitutional not just "on its face", but "as applied", both for Hanif and Ishaq.

{¶ 2} Although the assignments of error are lengthy, they all turn on the same question: Whether Hanif's ex-wife can be trusted to keep her residence with the couple's one-year-old son, Ishaq, in this country.

{¶ 3} Hanif is afraid that his ex-wife is going to flee the country with the child and, as a result, he will lose all contact with his son. The trial court addressed this issue at length in the divorce decree:

> Defendant Mother did testify that in an affidavit to the Court on May 1, 2012, she was requesting sole custody of Ishaq and leave of Court to return to Dubai. However, at trial she testified that her intent is not currently to leave the United States. She testified that she had a green card that allows her to be in this country on condition of marriage, which expired on March 31, 2013. Defendant Mother further testified that she has an immigration attorney, and she is working with

> same to get the condition of marriage removed from her green card so that she may stay in the United States. Defendant Mother is confident that she will be allowed to stay in the United States, and believes she has timely applied and is requesting permission based upon abuse by a U.S. citizen and her civil protection request.
>
> * * * No credible evidence was presented that Defendant Mother is a flight risk or that reasonable international travel with Ishaq should not be permitted.

(R. 327, at 15-16, Decree of Divorce.)

{¶ 4} The trial court also addressed the issues of involving the child in more detail elsewhere in the decree following the mandates of R.C. 3109.04:

> **VI.** ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES
>
> Although Plaintiff Father, in his April 17, 2012, *Complaint for Legal Separation*, requested sole custody, or in the alternative, Shared Parenting, Plaintiff's May 13, 2012 *First Amended Complaint*, which requested divorce rather than legal separation, contained no such request for shared parenting. Defendant Mother's argument is that Plaintiff Father's *First Amended Complaint* did not renew his original request for Shared Parenting, and therefore, the Court may not consider his request for Shared Parenting. Nonetheless, the Court finds that the Plaintiff Father did **not** file a Proposed Shared Parenting Plan, and therefore, any such request for Shared Parenting will not be considered.
>
> R.C. 3109.04(F) provides the statutory criteria for the court to consider in the allocation of parental rights and responsibilities. In a divorce, the court must allocate the parental rights and responsibilities for the minor children born as issue of the marriage. R.C. 3109.04(A).
>
> The Court makes the following findings with respect to the factors of R.C. 3109.04(F)(1):
>
> **A. "The wishes of the child's parents regarding the child's care;" R.C. 3109.04(F)(1)(a).**
>
> Based upon Plaintiff Father's narrative testimony, he wants sole custody of [redacted], and is willing to work on 50/50 time share of parenting time with the Defendant if she can stay in

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this country after March. However, as stated within his *Closing Statement, Findings and Facts and Recommendations of Plaintiff*, Plaintiff Father requested shared parenting with equal parenting time by alternating weeks for the next four years and then for the remaining years, alternating two week periods with no provision for holidays, vacations, or international travel.

Based upon her testimony, the Defendant Mother is requesting sole custody so long as she resides within Ohio. She is requesting a schedule of several day visits on Wednesdays, and alternate Saturday and Sundays, as she has concerns with the minor child having overnights with the Plaintiff Father prior to the child being able to communicate his needs. Plaintiff Mother's concern was aptly demonstrated in her testimony concerning [redacted]'s day visit with Father on or about August 18, 2012, wherein Mother sent him in a clean diaper marked with an "X" inside the diaper prior to the 10:00 a.m. scheduled parenting time. After the conclusion of Father's parenting time at approximately 1:00 p.m., Mother testified that [redacted] remained in the same diaper for this time period as demonstrated by the presence of the "X" in the diaper upon the child's returning home to her.

Defendant Mother also testified regarding what she perceived as Plaintiff Father's determination to switch [redacted] to formula while she was still breast feeding, despite her requests and what she believes was the recommendation of [redacted]'s pediatrician. Defendant Mother also testified regarding a time where Ishaq had to go to the emergency room for projectile vomiting immediately after the conclusion of Plaintiff Father's visit. On that occasion, according to Defendant Mother, Plaintiff Father was reluctant to answer the doctor's questions about what he had been feeding [redacted]. Despite Defendant Mother's concerns about [redacted]'s safety, she has not denied Plaintiff Father parenting time.

During the pendency of the litigation, the parties have engaged in a parenting schedule providing Plaintiff Father parenting time with [redacted] every Tuesday and Thursday from 6:00 p.m. until 9:00 p.m. and every Saturday and Sunday from 10:00 a.m. until 1:00 p.m. Defendant Mother proposes an expanded schedule to include one overnight once [redacted] is two years old, and once he reaches school age, she proposes some slight additional time for Plaintiff Father.

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Although Defendant Mother has been Ishaq's primary caregiver since birth, the schedule has allowed [redacted] to have regular and frequent contact with Plaintiff Father. Plaintiff Father testified that he repeatedly spoke to the Guardian ad litem to request overnight visitation.

Plaintiff Father's parents, whose permanent residence is in Pakistan, were staying with him at the time of trial. Plaintiff believes that his parents are suitable caregivers for Ishaq while he is at work. He would like [redacted] to have more time at his house, with his parents watching [redacted] while he is at work. However, Defendant Wife testified that due to concerns about the age and medical conditions of the paternal grandparents, she did not believe that they could properly care for the baby without assistance from Plaintiff Father. Defendant Mother believes that [redacted]'s paternal grandmother is unable to lift him at his current weight. [redacted]'s paternal grandfather is in failing health, and, according to Plaintiff Father, has been diagnosed with cancer. Defendant Mother also indicated that since neither grandparent drives or speaks English, she is concerned about Ishaq in the event of an emergency. Defendant Mother also expressed some concern about paternal grandmother's use of anti-psychotic medication, but it is not clear as to the extent of her psychological issues, if any.

B. "If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;" R.C. 3109.04(F)(1)(b).

The Court did not conduct an interview of the child in chambers, and neither parent requested an in-camera interview.

C. The child's interaction and interrelationship with his parents, siblings, and any other person who may significantly affect the child's best interest; R.C. 3109.04(F)(1)(c).

Both parents gave testimony demonstrating that they are very bonded to their child and show genuine love and affection for Ishaq. Although [redacted] is only one year old, he has had the opportunity to spend a good deal of time with both his maternal and paternal grandparents. [redacted]'s maternal

grandparents have visited from Dubai, and his paternal grandparents from Pakistan, are currently staying with the Plaintiff Father. Defendant Mother does not have relatives in the area, but she testified that she has made efforts to establish a support system and network of friends, including participating in "playgroups" with [redacted], and joining parenting and cultural groups.

D. The child's adjustment to the child's home, school, and community; R.C. 3109.04(F)(1)(d).

[redacted] has been cared for at home since his birth with Defendant Mother as the primary caregiver. Both parties have residences located close to each other, within a few minutes of the Gahanna police station. Defendant Mother testified that [redacted] is well fed, well clothed and happy. Ishaq is established with a pediatrician. Defendant Mother has joined play groups and culture programs with [redacted].

E. The mental and physical health of all persons involved in the situation; R.C. 3109.04(F)(1)(e).

There are no health concerns evidenced in the record regarding either child or their parents. Plaintiff Father testified that he had concerns about scratches the child had on his face alleging that the scratches were due to Defendant Mother's failure to properly clip the child's nails.

F. The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights; R.C. 3109.04(F)(1)(f).

The Court finds that the Defendant Mother is more willing to honor and facilitate the Plaintiff Father's parenting time rights. Defendant Mother testified that she did not always feel that Plaintiff Father exercised the best care for their son during his parenting time, but has continued to follow the Court ordered parenting time. Defendant Mother has continued her efforts to communicate to Plaintiff Father the important information with respect to [redacted] including his health, nutritional needs, and developmental milestones, despite Plaintiff Father's self-serving rebuffs and critical responses. Defendant Mother testified to a certain degree of reluctance to allow parenting time in excess of the court ordered time, recalling that she did not grant Plaintiff Father additional parenting time as Plaintiff Father had requested when his brother was in town. However, Mother further

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explained that she was unable to have the Guardian ad litem verify this additional parenting time, and was concerned that agreeing to additional parenting time without the Guardian ad litem's knowledge and approval in advance, that Plaintiff Father would claim that Defendant Mother failed to pick-up the child. In light of Plaintiff Father's prior actions and comportment, this refusal would be reasonable. Defendant Mother also testified that she has been late a few times for the exchanges, but has contacted the Plaintiff Father as soon as the issue arose.

In contrast, significant testimony was presented that the Plaintiff Father does not follow this Court's Orders. The Plaintiff Father testified that he did not maintain the Defendant Mother's health insurance, in violation of the Court's Temporary Orders, and did not inform Defendant Mother about the health insurance lapse. Yet, he maintained dual health coverage for himself. At the time of trial, Plaintiff Father had not yet taken the additional parenting classes he was ordered to take six months earlier. Plaintiff Father also testified that he did not remember if he turned over food stamps to the Defendant Mother as he was required to do pursuant to the Temporary Orders. He also testified that he has not paid the medical bills associated with Ishaq's birth, but further testified that he had paid some of his father's medical bills.

Of further importance, Defendant Mother provided credible testimony that Plaintiff Father is chronically late to the parenting exchanges. Defendant Mother testified that he blames his chronic tardiness on work conflicts, and traffic. It is of great concern that Plaintiff Father does not take responsibility for his actions as evidenced by Plaintiff Father's evasive testimony and lack of credibility. Rather than take responsibility for his actions, he consistently shifts the blame to the Defendant Mother. He testified that he often leaves his residence to return his child at 9:00 p.m., and that he is aware that the exchange is 19 minutes from his house. When asked if he was on time for exchanges, Plaintiff Father stated that he has asked for the Guardian ad litem to move the exchanges to 6:30 p.m. (rather than the currently scheduled 6:00 p.m.) and for overnight parenting time. He also deflected indicating that Defendant Mother is 15-20 minutes late for exchanges.

His consistent lateness for a parenting time schedule that has been in place since June 14, 2012, (as agreed) shows not only an arrogance and disregard for the value of Defendant

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Mother's time, but a lack of insight as to how it negatively affects his infant son to be made to regularly wait in a public space or car for long periods of time without a valid basis. The Plaintiff Father's chronic lateness in returning the child to Defendant Mother is a further denial of Defendant Mother's parenting time.

Plaintiff Father did testify that he has agreed to parenting schedule changes in the past, citing an instance right before Ramadan when the exchange was moved to an earlier 5:00 p.m. time.

G. Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor; R.C. 3109.04(F)(1)(g).

As of February 12, 2013, Plaintiff Father had a child support arrearage in the amount of $4,279.65. See *Defendants Exhibit X*. Based upon the parties' testimony, Defendant Mother did not receive any financial support for the first five months after [redacted] was born, and Plaintiff Father's meager contribution consisted of one pack of diapers and several outfits. However, Plaintiff Father testified that he is the sole supporter of his parents whom live with him, and that they do not contribute to his household expenses. Plaintiff Father also testified that he has not fully paid the medical bills associated with [redacted]'s birth, but he has paid some of his father's medical bills.

Further, Plaintiff Father applied for public assistance on July 3, 2012, and misrepresented that his wife and son were currently residing in his home. See *Defendant's Exhibit Y*. Plaintiff Father's lack of financial support is further worsened in light of Defendant Mother's testimony that her father provided $20,000.00 to Plaintiff Father during the short course of their marriage. Further, although the Magistrate ordered Plaintiff Father to provide any food stamps to the Defendant Mother, Plaintiff Father testified that he did not recall whether or not he did so.

H. Whether either parent previously has been convicted of or pleaded to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been

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adjudicated an abused child or neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the bases of an adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding, whether either parent previously has been convicted of or pleaded guilty to an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and where there is reason to believe that either parent has acted in a meaner resulting in a child being abused or a neglected child; R.C. 3109.04(F)(1)(h).

No evidence was presented on this issue.

I. Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent his or her right to visitation in accordance with an order of the court; R.C. 3109.04(F)(1)(i).

This issue was previously addressed in subsection F. above.

J. Whether either parent has established a residence, or is planning to establish a residence, outside the state; R.C. 3109.04(F)(1)(j).

Plaintiff Father testified that he and [redacted] are U.S. citizens, a focus that he emphasized throughout his testimony. Plaintiff Father was born in Pakistan, and has family in Pakistan, India and Dubai, United Arab Emirates (UAE). His parents have their permanent home in Pakistan, but are currently staying with the Plaintiff Father. Defendant Mother was born in India, and has family in India and Dubai, UAE. Her parents reside in Dubai, United Arab Emirates. Defendant Mother testified that they first met online in October 2010 on two arranged marriage web sites, and then met face-to-face in December 2010 with Defendant Mother's father's permission. Defendant Mother testified that Plaintiff Father seemed settled and ready to start a family. She further testified that she felt he was appropriate as a husband because he wanted

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his children to have an Islamic upbringing, was financially able to care for her, and that he wanted to return to the Middle East when the children were school age.

Defendant Mother testified that in December 2011 while she was pregnant, that Plaintiff Father made threats of abduction. They fought, and Plaintiff Father asked her to leave. He threatened that if she tried to leave the United States with the child, he would shoot her and run away.

Although these parties originally focused on a similarity of their culture, it appears that there was much disagreement about the practice of "confinement" wherein a woman, from the time she is seven months pregnant until a minimum of 40 days after the child's birth, is in the care of her mother's family. Defendant Mother testified that she would engage in this traditional practice if she still lived at home. Defendant Mother testified that she believed Plaintiff Father felt threatened about this practice, so Defendant Mother's parents decided to come to the U.S. Defendant Mother testified that her parents came to the U.S. in January 2012 and rented an apartment; on February 25, 2012, Plaintiff Father threw her out of the house, and she moved into the apartment with her parents. There were many attempts at reconciliation including dinners at each other's houses and celebration of an anniversary. Defendant Mother relayed in her testimony that some days the Plaintiff Father was nice and sweet, and other days he was rude and mad.

Defendant Mother did testify that in an affidavit to the Court on May 1, 2012, she was requesting sole custody of [redacted] and leave of Court to return to Dubai. However, at trial she testified that her intent is not currently to leave the United States. She testified that she had a green card that allows her to be in this country on condition of marriage, which expired on March 31, 2013. Defendant Mother further testified that she has an immigration attorney, and she is working with same to get the condition of marriage removed from her green card so that she may stay in the United States. Defendant Mother is confident that she will be allowed to stay in the United States, and believes she has timely applied and is requesting permission based upon abuse by a U.S. citizen and her civil protection request.

Defendant Mother provided credible testimony that she intends to remain in the United States, acknowledged [redacted]'s need for a relationship with his Father, and outlined her plan

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for supporting herself here. These plans include joining a medical transcriptionist class, and ultimately completing her residency to become a medical doctor. She also testified with respect to the cultural groups, play groups and parenting groups that she has participated in order to establish a support system and further integrate herself and [redacted] into the community. At the time of trial, no evidence was presented that she was not legally in the United States or under the threat of deportation. The Court finds Defendant Mother's testimony to be credible. No credible evidence was presented that Defendant Mother is a flight risk or that reasonable international travel with [redacted] should not be permitted.

Plaintiff Father did not present any evidence that he intends to move outside of the state. Plaintiff Father testified regarding his fears that the Defendant Mother would move outside of the United States and further testified as to what he perceived as the likelihood that Defendant Mother was going to take Ishaq and leave the United States and go to countries which may not be signatories to the Hague Convention. In his testimony, Plaintiff Father admitted that when Defendant Mother returned to her apartment from the hospital after [redacted]'s birth rather than return with him to his residence, he considered such an act as "child abduction" even though Plaintiff Father actually drove Defendant Mother and [redacted] to Defendant Mother's apartment. Plaintiff Father also admitted upon cross-examination that he has placed alerts with the U.S. Department of State and Interpol, Center for Missing Children, the U.S. passport office indicating that his child is at risk of being abducted. In order for the Defendant Mother to be able to travel internationally with [redacted], Plaintiff Father would have to remove any existing barriers to international travel he has initiated, both in the United States and abroad, and refrain from initiation any new obstacles to [redacted]'s travel.

In addition to abduction alerts to state and international agencies, the Plaintiff Father also admitted that he contacted U.S. Immigration, and testified that he told immigration officials that his marriage was a sham, and that Defendant Mother only married him for a green card. Plaintiff Father also testified that he destroyed Defendant Mother's green card, and other forms of her identification. Plaintiff Father reiterated to this Court on many occasions that he was a naturalized citizen, and clearly believes that this designation provides a basis for him to obtain sole custody of this child. Plaintiff Father's actions further indicate that he believes

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Defendant Mother should be deported. During the marriage, there was significant conflict about Defendant Mother's identification, particularly her green card which documented that she was legally within the country. Defendant Mother testified that she was often asked to leave the marital residence, but that Plaintiff Father would not provide her with her identification when she asked for it.

K. Other Relevant Evidence

1. Communication between the Parents: Defendant Mother has continued attempts to communicate with Plaintiff Father despite Plaintiff Father's physical and emotional abuse. Plaintiff Father clearly rebuffs Defendant Mother when she attempts to relay pertinent information as to [redacted]. It appears that Plaintiff Father's sole focus is Defendant Mother's lack of citizenship and his anger at her, rather than providing a conducive environment of respect to encourage Defendant Mother to openly engage with him and facilitate co-parenting. Plaintiff Father simply cannot cooperate with Defendant Mother despite her on-going efforts to do so. It is incumbent upon Plaintiff Father to reconsider the effects of his behavior upon his child, as well as the effects upon his parenting time. Clearly, Plaintiff Father has the ability to encourage the sharing of love, affection, and contact between the child and the other parent, but it is unclear if he is willing to do so.

Plaintiff Father testified that he does not want to continue to exchange [redacted] at the Gahanna Police Station, yet Defendant Mother testified with regard to Plaintiff Father's erratic behavior at exchanges, including telling people in the parking lot that this was an international abduction case. Defendant Mother also testified that at a recent exchange that when Ishaq began to cry that Defendant Mother attempted to comfort [redacted] by patting his head and speaking to him, Plaintiff Father smacked Defendant Mother's hand away.

2. Any history of, or potential for, child abuse, spouse abuse, other domestic violence or parental kidnapping by either parent:

In his narrative testimony, Plaintiff Father made several allegations that Defendant Mother falsified a lot of information, but he was not specific as to what she falsified other than the Defendant Mother had filed a petition for a civil protection order (which was granted). He also testified

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that there had been an abduction threat, but he failed to present any evidence to support this perception. In fact, Plaintiff Father was often evasive and not credible during much of his testimony.

Defendant Mother testified as to Plaintiff Father's controlling behaviors. She testified that she felt as though she was "under house arrest" – stating that Plaintiff Father controlled everything including finances, phone, computer, and car keys. During the marriage when Defendant Mother was still living with the Plaintiff Father, and his parents were also residing there, Defendant Mother testified that Plaintiff's father kept the house keys and his mother kept the car keys if Plaintiff Father was not present. Defendant Mother testified that she had no access outside the house unless a neighbor took her out, which was rare. She also testified that Plaintiff Father would often tell her to leave the house, and she would ask for her identification, and Plaintiff Father would refuse to provide same. Plaintiff Father continually accused Defendant Mother of marrying for a green card.

Defendant Mother testified that Plaintiff Father physically abused her on two occasions during the marriage. Defendant testified that August 28, 2011, was the first time Plaintiff hit her. He threw her laptop, pushed her against a wall and told her to leave. On January 20, 2012, Defendant Mother testified that Plaintiff Father asked for her passport, and she asked for her green card in return. He began screaming at her, hit her, slapped her, and pushed her on the bed. She recalled that he was screaming at her that her father would not give him the money he had requested. At this time she was 30 weeks pregnant, and she was sent to the hospital for observation.

3. Recommendation of the guardian ad litem of the child: The Guardian ad litem issued her interim recommendation and report on February 20, 2013. She participated in the trial of this matter, and was available for cross-examination, yet neither party called her to testify. She filed her *Final Report and Recommendation of Guardian ad Litem* on March 29, 2013. The Court has thoroughly reviewed each report and recommendation.

In Plaintiff Father's narrative testimony, he testified that he felt that the guardian ad litem was too biased.

(R. 327, at 6 – 19, Decree of Divorce.)

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{¶ 5} Turning to the individual assignments of error, the facts alleged in the assignment of error do not correspond with the provisions of the decree set forth above.

{¶ 6} Divorce and ancillary custody actions are purely matters of statute. *Shively v. Shively*, 10th Dist. No. 94APF02-249 (Sept. 22, 1994), citing *State ex rel. Papp v. James*, 69 Ohio St.3d 373, 379 (1994). In such actions, domestic relations courts have jurisdiction, as statute confers and limits it, to allocate parental rights and responsibilities for the care, custody, and control of a child. *Id.*; *see* R.C. 2301.01; R.C. 3105.03, 3105.21, and 3109.04. In reviewing statutes, we are obligated "to give effect to the words used and not to insert words not used." *In re James*, 113 Ohio St.3d 420, 2007-Ohio-2335, ¶ 13.

{¶ 7} The first assignment of error alleges that the trial court erred and deprived Hanif of his right to association with his child, his right to substantive due process, and his right to equal protection, as well as depriving Ishaq of the same rights.

{¶ 8} Initially we address Hanif's presumption to be asserting the constitutional rights of Ishaq in this appeal. [redacted] was a party to this divorce having been appointed a Guardian *ad Litem* and had a right to file an appeal in this case. *Schottenstein v. Schottenstein*, 10th Dist. No. 00AP-1088 (Nov. 29, 2001). An appellant cannot raise an issue on another's behalf, especially when that party could have appealed. *In re D.T.*, 10th Dist. No. 07AP-853, 2008-Ohio-2287, ¶ 8. Hanif has no standing to appeal on behalf of Ishaq in this appeal.

{¶ 9} In reviewing the trial court's decision, we are guided by a presumption that the trial court's findings are correct. The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that "the trial judge is best able to view the witnesses, observe their demeanor, gestures, voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Griffin v. Twin Valley Psychiatric Sys.*, 10th Dist. No. 02AP-744, 2003-Ohio-7024, ¶ 28.

{¶ 10} The trial court heard the actual testimony from Sakhi and found her credible. Based upon the testimony presented in open court, the trial court judge concluded that Sakhi was not going to flee the country with the child. The trial court judge also concluded that Sakhi believed that Hanif should be involved in raising the child.

{¶ 11} We are not in a position to overturn that set of factual findings by the trial court judge. Given those factual findings, Hanif will not lose access to the child.

{¶ 12} The first assignment of error is overruled.

{¶ 13} The second assignment of error argues the trial court, in awarding sole custody of [redacted] to Sakhi without restrictions, was not in the best interest of the child and was not supported by the evidence.

{¶ 14} "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C. E. Morris Co. v. Foley Const. Co.*, 54 Ohio St.2d 279, 280 (1978). The in-court testimony of Sakhi constituted competent credible evidence to support the trial court's orders. Hanif's fears are understandable, but his fears do not outweigh the testimony of his ex-wife which was found to be credible by the trial court judge.

{¶ 15} Further, the trial court addressed the issue of international travel directly and implemented a number of procedures and restrictions to ensure that the child would be allowed to reasonably travel. These procedures include requiring written consent for travel to be obtained from both parents, having the Guardian ad Litem hold [redacted]'s passport when not in use, and requiring the non-traveling parent to take all actions necessary to facilitate the travel. (R.327, at 26-27 Decree of Divorce.) It is evident that the trial court attempted to address the fears of Hanif but at the same time not hinder [redacted], who no doubt would benefit from international travel with much of his extended family abroad, whose best interest the trial court is obligated to uphold.

{¶ 16} The second assignment of error is overruled.

{¶ 17} The third assignment of error argues the trial court erred in awarding sole custody rather than shared parenting to both parties, on the basis that neither party had filed a shared parenting plan.

{¶ 18} "The discretion which a trial court enjoys in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned. The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record." *Miller v. Miller*, 37 Ohio St.3d 71, 74

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(1988). A trial court's discretion in custody matters is broad but must be guided by the language set forth in R.C. 3109.04. *See Baxter v. Baxter*, 27 Ohio St.2d 168 (1971). The trial court's decision must not be reversed absent an abuse of discretion. *Davis v. Flickinger*, 77 Ohio St.3d 415, 418 (1997).

{¶ 19} The failure of the parties to file a shared parenting plan does not ultimately decide the issue. The communication problems between the parties were enormous. Hanif was not paying his child support, leading to an arrearage of over $4,000 on a child who was less than two-years old. The visitation schedule had been a problem with Hanif not showing up on time. Their attitudes toward each other were so bad that transfer of the child occurred in a police station so it could be recorded.

{¶ 20} The mother was breastfeeding and had been the primary caregiver for the child. If there were no shared parenting, she would be the likely residential parent. Given the communication problems and other problems between the parties, shared parenting was not in the best interest of anyone. We find that the trial court did not abuse its discretion in naming Sakhi the residential parent and legal custodian, subject to the parenting time of Hanif as determined by the court.

{¶ 21} The third assignment of error is overruled.

{¶ 22} All three assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

Judgment affirmed.

DORRIAN and T. BRYANT, JJ., concur.

T. BRYANT, J., retired, of the Third Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).

DORRIAN, J., concurring.

{¶ 23} Having carefully reviewed the transcript, I would concur with the majority and would affirm the trial court. I would also note that the transcript reveals that appellant, not appellee, threatened abduction. The appellee testified that appellant told her, "if you ever try to leave with [the baby], I will just shoot you and I will take him and I will run away within the United States." Appellee further testified that appellant told her

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"the United States is a big place and children go missing all the time and nobody would ever find him." (Tr. Vol. II, 63.)

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Hanif Ibrahim,	:	
Plaintiff-Appellant,	:	
v.	:	No. 13AP-681 (C.P.C. No. 12DR-1670)
Sakhi Ibrahim,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on December 5, 2013, the assignments of error are overruled. Therefore, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed. Costs shall be assessed against appellant.

TYACK, DORRIAN & T. BRYANT, JJ.

/S/JUDGE
Judge G. Gary Tyack

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Tenth District Court of Appeals

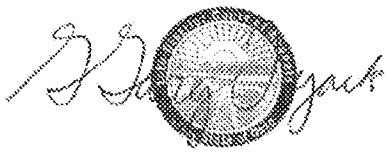
Date: 12-06-2013

Case Title: HANIF IBRAHIM -VS- SAKHI IBRAHIM

Case Number: 13AP000681

Type: JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge G. Gary Tyack

Franklin County Ohio Court of Appeals Clerk of Courts- 2014 Jan 14 12:55 PM-13AP000681

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Hanif Ibrahim,	:	
Plaintiff-Appellant,	:	
v.	:	No. 13AP-681 (C.P.C. No. 12DR-1670)
Sakhi Ibrahim,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

MEMORANDUM DECISION

Rendered on January 14, 2014

Elizabeth N. Gaba, for appellant.

Law Offices of Virginia C. Cornwell, and *Virginia C. Cornwell*, for appellee.

ON APPLICATION FOR RECONSIDERATION

TYACK, J.

{¶ 1} Plaintiff-appellant, Hanif Ibrahim, through counsel, has filed an application for reconsideration of our decision issued on December 5, 2013.

{¶ 2} Counsel for appellant submits that the desire of one or more judges of this court to have a question or questions answered by the guardian ad litem somehow constituted error making the appellate court's decision open to question. We do not find that the guardian ad litem's response to inquiry from the panel constituted argument for purposes of App.R. 12. Further, the responses of the guardian ad litem merely overlapped

EXHIBIT 3

with the information provided to the trial court by the guardian. Such information was in the appellate record.

{¶ 3} The other issue submitted via the application for reconsideration involves the attempt of counsel for appellant to argue that the child was somehow deprived of rights by the trial court's orders. Actually, the trial court carefully tried to protect the rights and the best interests of the child. Although appellant fears he will lose access to his child, the trial court did not believe that there was a factual basis for that fear. The trial court believed Sakhi Ibrahim's testimony that she had no desire to cut off appellant's access and that she believed that the child's best interests were served by being raised with input from both parents.

{¶ 4} The trial court's assessment of the credibility of Sakhi Ibrahim on these issues was critical to the trial court's resolution of those issues. We are not in a position as an appellate court to reassess Sakhi Ibrahim's credibility.

{¶ 5} The key issues were appropriately addressed both by the trial court and by this appellate court. The application for reconsideration is denied.

Application for reconsideration denied.

DORRIAN and T. BRYANT, JJ., concur.

T. BRYANT, retired, formerly of the Third Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).

Franklin County Ohio Court of Appeals Clerk of Courts- 2014 Jan 14 12:55 PM-13AP000681

Franklin County Ohio Court of Appeals Clerk of Courts- 2014 Jan 15 9:38 AM-13AP000681

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Hanif Ibrahim,	:	
Plaintiff-Appellant,	:	
v.	:	No. 13AP-681 (C.P.C. No. 12DR-1670)
Sakhi Ibrahim,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

JOURNAL ENTRY

For the reasons stated in the decision of this court rendered herein on January 14, 2014, it is the order of this court that appellant's application for reconsideration is denied.

TYACK, DORRIAN & T. BRYANT, JJ.

/S/JUDGE
Judge G. Gary Tyack

T. BRYANT, J., retired, formerly of the Third Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).

Court Disposition

Case Number: 13AP000681

Case Style: HANIF IBRAHIM -VS- SAKHI IBRAHIM

Motion Tie Off Information:

1. Motion CMS Document Id: 13AP0006812[redacted]980000
   Document Title: 12-16-2013-MOTION TO RECONSIDER
   Disposition: 3200

Franklin County Ohio Court of Appeals Clerk of Courts- 2014 Jan 15 9:38 AM-13AP000681