No. 19-FM-709
District of Columbia Court of Appeals

MICHAEL KLISCH,

Appellant,

v.

ERIN KLISCH,

Appellee.

Appeal from the Superior Court of the District of Columbia, Family Court – Domestic Relations Branch No. 18 DRB 308 (Hon. Lynn Leibovitz, Judge)

BRIEF OF THE APPELLEE

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List of all Parties, Intervenors, Amici Curiae, and Counsel in the Trial Court:

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Statement of the Facts

A. The Children and the Custody Schedule

The parties, Mr. Klisch and Ms. Sears, are parents to two children, namely [redacted], born [redacted] (age [redacted] at the time of trial), and [redacted], born [redacted] (age [redacted] at the time of trial.) A36; A53. After the parties separated, Ms. Sears sought to share equally physical custody of the children with Mr. Klisch, whereas Mr. Klisch requested that he be awarded primary physical custody of the children. *See* A282; A290. In March 2018, the Court entered a *pendente lite* custody schedule under which Mr. Klisch and Ms. Sears shared joint physical custody of the children pursuant to an equal, 50/50 timesharing schedule, which took effect on or around April 1, 2018, when Ms. Sears moved out of the former marital home. A199-A202. At the conclusion of the trial, in its Final Order and Judgment of Absolute Divorce, the Court granted Ms. Sears' requested custody schedule and awarded Mr. Klisch and Ms. Sears joint physical custody of the children pursuant to an equal, 50/50 timesharing schedule. A1845-A1863. Accordingly, the *pendente lite* child support award and the final child support award[1] were based on the parties sharing 50/50 custody of the children.

[1] On February 11, 2019, the Court entered the Final Order and Judgment of Absolute Divorce, which ordered Mr. Klisch to pay Ms. Sears $8,083 per month in child support. *See* A1775-A1869. This child support award was later reduced to $7,562 per month in the Court's Order Amending Child Support Order, dated May 13, 2019. *See* A1976-A1986.

B. The Parties' Incomes and Ability to Pay Child Support

At the start of the trial in July 2018, Ms. Sears was employed as an associate attorney with Three Crowns LLP working at an eighty-five percent schedule earning approximately $265,943 per year, inclusive of $233,740 per year in base salary plus estimated average annual bonus and profit sharing, and she received nominal investment income of approximately $192 per year. A2086, A2155-A2157. The Court thus found Ms. Sears' gross annual income to be $266,135.

Ms. Sears' gross annual income was based on a reduced billable hours schedule, which was consistent with her then-current work status at Three Crowns and her having worked a seventy percent reduced hours schedule at her prior law firm (Paul Hastings LLP) ever since the birth of the parties' first child in [redacted] and up until the parties' separation. A478, A506. In 2016, the year prior to the parties' separation, Ms. Sears earned $248,998, at Paul Hastings LLP, demonstrating the consistency between Ms. Sears' earnings during the marriage and the amount the Court determined to be Ms. Sears' income for purposes of calculating child support. *See* SA3. The only time after the birth of the parties' children that Ms. Sears worked a full-time schedule was in her first year at Three Crowns LLP (i.e., May 2017 to June 2018). However, Ms. Sears had to reduce her hours to an eighty-five percent schedule at Three Crowns when it became clear that she was not meeting the firm's minimum hour requirements and thus with the hope

that the reduced hours requirement would give Ms. Sears a greater chance of maintaining her position at the firm. A722-A723; *see* A507-A508.

During the trial (which occurred on eleven days spread over three months), Ms. Sears changed jobs and began working as a full-time legal recruiter for Garrison & Sisson, Inc. A2189-A2190. Ms. Sears' change in employment was due to a realistic assessment that she would not have long-term success at Three Crowns LLP, where very few attorneys became a partner and those who did billed upwards of 2,400 hours a year, which Ms. Sears was unable to do. A1567. Ms. Sears had seen several talented attorneys leave the firm due to their similar lack of opportunity and advancement at Three Crowns, so Ms. Sears determined it was wise to take advantage of the job offer she received from Garrison & Sisson since she did not have a long-term future at Three Crowns. *See* A1566-A1568. Ms. Sears also changed jobs because the new job offered regular hours and removed the need for international travel to better fit her parenting responsibilities. A1566-A1569. Ms. Sears' compensation package changed to a commission basis, including a base income as an advance that was on earned commissions. In her first year as a legal recruiter, Ms. Sears would earn $65,000, the amount of the advance she received on commissions, and potentially additional income if she earned more than $65,000 in commissions. *See* A2189. Ms. Sears estimated that her average annual income after two years would be approximately $200,000. A1530. Importantly,

Ms. Sears did not request an adjustment to the amount of child support requested as a result of her change in employment, even though her decision to change employment was one that was made for the best interests of the children. A1530. Mr. Klisch did not present evidence at the trial that income should be imputed to Ms. Sears or that Ms. Sears was voluntarily impoverishing herself. *See* A1978-A1981.

Mr. Klisch is an attorney with Cooley LLP, where he earned $2,255,107 in 2017. A2086; A2184-A2186; A348; A1448; A2197-A2198. Mr. Klisch's 2017 income was consistent with prior years and his anticipated earnings in 2018. *See* SA3-SA4; A2227-A2230. In addition, Mr. Klisch received investment dividend income of $66,575 in 2017. A2086; A2197-A2198. The Court thus found Mr. Klisch's gross annual income to be $2,321,682. A1981. The Court did not include interest income (of $5,915), or taxable refunds (of $43,187), or capital gains (of $216,794), that Mr. Klisch received in 2017 in the Court's calculation of his income available for child support purposes. *Cf.* A2197-A2198.

Throughout the trial, Mr. Klisch stipulated that he had the ability to pay the full amount of child support that Ms. Sears was requesting. *See* A360; SA249. Mr. Klisch reports having a budget surplus of $71,678 per month. A2231-A2233.

Pursuant to the parties' Prenuptial Agreement, Mr. Klisch was not obligated to pay alimony to Ms. Sears, *see* A37, so there is no alimony adjustment to the parties' incomes for the purpose of calculating child support.

C. The Method of Calculating Child Support

At the initial hearing in the case, the parties and the Court recognized that this was an above-Guidelines child support case, because the parties' combined incomes exceed $240,000 per year, the maximum combined income amount up to which the D.C. Child Support Guidelines presumptively apply. *See* D.C. Code § 16-916.01(h); SA73-SA76. Furthermore, Mr. Klisch's counsel specifically stated that "[t]he guidelines don't apply," SA74, and requested that Ms. Sears create "a detailed list of what…she believes the children's reasonable expenses are," SA75, to inform the calculation of child support. Counsel for Mr. Klisch further recognized at trial that the court needed "to determine the reasonable needs of the children based upon actual family experience" in setting child support and "that the judicial officer may exercise discretion to order more child support once that is done." A309.

At the second hearing in the case, on March 13, 2018, the Court ordered Mr. Klisch to pay Ms. Sears *pendente lite* child support based on the minimum award required by the D.C. Child Support Guidelines and noting that this was a "nominal" amount, with the understanding that Ms. Sears was not waiving her

request for an increased amount of child support retroactive to April 1, 2018, the date on which Ms. Sears' moved to her separate residence and Mr. Klisch's child support payments to her began. *See* A172, A175-A176, A180; A199-A203.

At trial, Ms. [redacted], a Certified Financial Planner, Certified Divorce Financial Analyst, and Certified Public Accountant, with 19 years of experience in financial planning, and 11 years of experience in the sub-field of divorce financial planning, *see* A315-A316, SA1-SA2, testified as an expert witness on behalf of Ms. Sears. A317. Ms. [redacted] worked with Ms. Sears to prepare a budget of Ms. Sears' expenses and the expenses of the children. *See* A1938-A2083, A2102-A2116. Ms. [redacted]'s process for developing the budget involved interviews with Ms. Sears to understand the family's historical spending and lifestyle; a review of the parties' monthly credit card statements and bank statements from 2016, 2017, and 2018; a review of receipts, invoices, quotes, and online research; and drawing upon Ms. [redacted]'s general knowledge and expertise from preparing over 250 budgets in her career assisting clients in divorce proceedings. A320-A321. The particular analysis used and information which informed each entry in the budget was documented by Ms. [redacted] in footnotes included on the budget. A321. The budget was thereafter supported by Ms. [redacted]'s testimony, Ms. Sears' testimony, and portions of testimony by Mr. Klisch and several other witnesses, which will be discussed herein.

In marked contrast, Mr. Klisch did not have an expert witness testify concerning Ms. Sears' budget, the children's expenses, methodologies of calculating child support, or to examine Ms. Sears' request for child support, nor did he produce documents to contradict Ms. Sears' evidence. Mr. Klisch instead testified based on his opinions about the children's expenses and presented a self-produced financial statement, but the Court found its reliability lacking "in that little corroboration or support for its assertions as to expenses was presented." A1817.

In its determination of child support, the Court considered, scrutinized, and dissected Ms. Sears' budget of children's expenses. The Court based its child support award on the documented children's expenses within Ms. Sears' budget that reflected "actual family experience," the reasonable needs of the children, that were "primarily for the benefit [of] the children," and were not speculative. A1819 (*citing Prisco v. Stroup*, 947 A.2d 455, 461 (D.C. 2008), *Kennedy v. Orszag*, 2006 DRB 2538 (2006) at 51; *Nevarez v. Nevarez*, 626 A.2d 867 (D.C. 1993)).

D. Summary of Ms. Sears' Budget

Ms. Sears' budget (A1938-A2083, A2102-A2116) included expenses Ms. Sears incurred for herself, expenses Ms. Sears incurred for the children when they were in her custody, and "expenses for the children that could practically be shared by [Ms. Sears] and [Mr. Klisch] because the children have those expenses regardless

of whose home they're in…." A319. Ms. Sears and Ms. [redacted] testified in detail about how each specific line item entry in the budget was determined. *See, infra.* The budget included expenses for housing, utilities, food, clothing, medical care, transportation, recreation, education, child-care, extracurricular activities, home maintenance, gifts, personal care, debt service, unreimbursed business expenses, and certain miscellaneous expenses. *See,* A1938-A2083, A2102-A2116. The budget includes numerous footnotes explaining how each line item entry was calculated, which both Ms. Sears and Ms. [redacted] adopted as their testimony. A329, A564-A565.

The Court calculated the award of monthly child support that Mr. Klisch will pay to Ms. Sears based on the reasonable children's expenses incurred directly by Ms. Sears consistent with actual family history. In addition, the Court ordered each party to pay his or her proportional share of children's expenses that could be shared. The Court included all medical expenses and certain other expenses for the children as shared expenses. The Court did not include any expenses related to home maintenance, debt service (much of which was related to the attorneys' fees costs from the trial court proceedings as a result of Mr. Klisch refusing to agree to shared custody of the children), unreimbursed business expenses, or miscellaneous expenses in its calculation of monthly child support. *See*, A1841, A1844, A2080-A2082.

E. Children's Expenses Incurred Directly by Ms. Sears

a. Housing.

Prior to their separation, the parties and the children resided in a home that Mr. Klisch owned in the Cleveland Park neighborhood of Washington, DC. *See* SA142. Mr. Klisch's home was valued at $3,900,000 as of July 1, 2008, when the home's value was estimated in the parties' Prenuptial Agreement. *See* A1823; Pl. Exh. 58. Mr. Klisch reported that he pays $2,276 per month for real estate taxes and home insurance, $538 per month for utilities, and $500 per month for home repairs. A2231-A2233. However, Mr. Klisch no longer has a mortgage on his home, which he paid off during the parties' marriage. *See id.* The two children lived in this home and this neighborhood since they were born and they continue to reside there during Mr. Klisch's custodial time, and the children attend the local neighborhood elementary school. *Id.* The children can walk or ride their bikes to school from Mr. Klisch's home. A565. Mr. Klisch paid all expenses related to the family's housing prior to the separation. A141.

In Mr. Klisch's home, there is room for each child to have [redacted] own bedroom. *See* A1460. The room used as the nursery when the children were very young was converted to a playroom during the parties' marriage, complete with ample toys, books, games, and other play items. A1460. At the time of trial, Mr. Klisch testified that he had since converted the playroom to a boxing ring equipped with a

punching bag, speed bag, and wrestling mats, as well as books, games, and shelves with toys and other items. A1460. Mr. Klisch's credit card statements reflect purchases for his home, including home furniture ($999 for a new grill, $289 at Crate & Barrell, $359 for new appliances, and $1,410.71 at Pottery Barn), and home landscaping ($385 and $369 at American Plant). A1485-A1487; SA16-SA23.

In June 2017, just one month after Ms. Sears started her new position at Three Crowns and was trying a full-time work schedule for the first time since the birth of the children, Mr. Klisch notified Ms. Sears that he intended to seek a divorce. A1987. Pursuant to the parties' Prenuptial Agreement, there was no marital property to be divided and Mr. Klisch retained the house, his entire financial portfolio (valued at close to $2,000,000 in July 2008 and approximately $7,891,658 in June 2018, not including retirement assets), his partnership interest in his law firm, and all other assets titled in his name, and Ms. Sears needed to move out and find alternative housing within one year of receiving Mr. Klisch's notification. A36; A284; Pl. Exh. 58.

The parties agreed that it was best for the children to continue to reside in Cleveland Park and continue to attend school at John Eaton Elementary School, the neighborhood public school. A281-A288. Accordingly, in December 2017, Ms. Sears purchased a three bedroom, three and one-half bath home in the same

neighborhood, Cleveland Park, approximately two blocks from Mr. Klisch's home. SA178. Ms. Sears purchased the home for $1,225,000 by liquidating her available savings and obtaining a $980,000 mortgage. A2053. The monthly mortgage payment for Ms. Sears home is $5,564.35 per month, inclusive of principal, interest, real estate taxes, and insurance. A2053.

Ms. Sears testified that she purchased this home because it was in the same neighborhood where the [redacted] had grown up their entire lives, the [redacted] have many friends in the neighborhood and are part of the community, it was near the [redacted]' school, the [redacted] could continue to ride their bikes to school, it would be near Mr. Klisch's home and having both mom's and dad's house nearby would presumably be good for the [redacted], and the home was move-in ready and, other than replacing the stairs that were not up to code and thus unsafe, didn't require significant repairs. A565; A1113. Ms. Sears looked at other homes in the neighborhood and the home she purchased was "at the lower end of what's available on the market in Cleveland Park." A565. Mr. Klisch recognized that Ms. Sears living "reasonably close [] makes things practically easier." A1457-A1458.

At the pretrial hearing, Mr. Klisch's counsel agreed that the Court could take into consideration the costs to Ms. Sears of her new, post-separation housing and transportation for the children in determining child support. SA116-SA119. Ms.

Sears' new home has three bedrooms and a fenced yard where the [redacted] play. SA178-SA179. The children share a room in Ms. Sears' home. A639, A680.

Ms. [redacted] testified that she allocated two-thirds of Ms. Sears' housing expenses to the children because the house benefits the children and "by virtue of having two children, a larger home would be purchased to accommodate three people or three people and an au pair than one would purchase if they were alone." A444. Furthermore, Ms. [redacted] testified that this was reasonable despite the children living with Ms. Sears fifty percent of the time,

> "[b]ecause if the children are with her fifty percent of the time or one hundred percent of the time, she still needs a house for them, and it would be the same house. She can't shrink the size of the house for the time …when they're not with her and then expand it when they are with her. So she has those costs one hundred percent of the time whether the children are with her or not with her in the house." A464.

In its child support award, the Court allocated fifty percent of the cost of Ms. Sears' monthly mortgage to the children, or $2,782 per month. A1823-A1824; A1981-A1982. The Court did not include any expenses associated with maintenance of the home in the child support award. *See* A1841. The amount that the Court including in the child support award to cover the children's housing expenses ($2,782 per month) was a reasonable need for these children, based on Ms. Sears' actual expenses, and this portion of the housing expenses primarily benefited the children.

b. Utilities.

Ms. Sears' budget includes utilities she incurs in her home, specifically electricity, gas, water, and Verizon (bundled cell phone, iPads, internet, cable, and applications), which total $590.68 per month. A2054-A2055. Ms. [redacted] reviewed three months' worth of Ms. Sears' utility bills and bank statements to calculate the utilities.[2] A322; A2055. The Court included approximately forty-five percent of this total monthly amount, or $265.50 per month, in its award of monthly child support.

Mr. Klisch's own budget, which was not verified with supporting documentation, indicates that Mr. Klisch incurs utility costs of $538 per month, which shows that Ms. Sears' budgeted utility expenses and the child support award for the children's portion of utility expenses are consistent with family experience and reasonable. *See* A2231-A2233.

c. Food.

Prior to the parties' separation, Mr. Klisch, Ms. Sears, and [redacted] would purchase groceries for the family. A324; A1506-A1507. Ms. [redacted] reviewed 12 months of bank and credit card statements from before the parties' separation to determine a monthly average of $928.21 for grocery expenses, and adjusted the

[2] Ms. Sears had only resided in her home for approximately three months at the time that Ms. [redacted] was reviewing the utility expenses and constructing the budget, so there was not more data to include in this analysis.

calculations to reflect that the children would be with Ms. Sears one-half of the time and that Ms. Sears had a live-in au pair to provide childcare. A324-A325, A2056. As a result, in her budget Ms. Sears allocated $464.11 per month for the children's groceries expenses, which was based upon and therefore consistent with the family's historical spending on groceries. *See* A2056.

Prior to the parties' separation, the family ate dinner out at restaurants approximately one to two times per week and ate breakfast at a restaurant once per weekend. *See* A754; A1470; SA24-SA43, A2193-A2196. Since the parties' separation, Ms. Sears continued to eat out at restaurants with the children and estimated this would continue in the future at the rate of approximately five meals per month costing $50 per meal (for both children) and one meal per month costing $60, totaling $360 per month for the children. A1993; SA16-SA23. Ms. [redacted] reviewed the parties' credit card statements to verify the restaurant expenses and determined the budgeted amounts were consistent with the family's practices prior to the separation. A325-A326; *see* SA24-SA43, A2193-A2196. The Court included $225 per month in the child support award for expenses associated with dining out with the children, which was consistent with the documentary evidence of the family's historical dining out habits and expenses and was thus reasonable.

Ms. Sears' budget included a food delivery service, costing $20 per month, which Mr. Klisch acknowledged the family had historically used. A1218. The

Court included $12.05 of this amount in the calculation of child support, because the expense was consistent with the family's historical practice and reasonable.

d. Clothing.

Ms. Sears' budget for clothing for the children includes the costs of periodic seasonal sets of new clothes for the children, approximately four pairs of shoes per child per year shoes, and periodic items such as winter coats and sports attire (all costing $161.46 per month), and occasional specialty outfits and Halloween costumes (costing $79.19 per month). A2058-A2059; A2104; A326-A330; A538; A1202; *see, e.g.,* SA32-SA35. Ms. Sears' budgeted clothing expenses were based on a review of actual receipts and other documentation and were consistent with the family's past practices. *Id.* Mr. Klisch acknowledged purchasing the children ski outfits. A1202. The Court included $90 per month in its award of child support for the children's various clothing expenses that Ms. Sears will incur, which is reasonable and appropriate.

e. Transportation.

Ms. Sears' budget apportions certain transportation expenses to the children. A2064. Ms. Sears owns a 2012 Acura which she uses for transporting the children. A335-A336. Ms. Sears pays $1,213 per year for car insurance. A2065. Ms. Sears puts gas into her car approximately once per month at an average cost of $72.04. A2065. Ms. Sears incurs periodic repairs and maintenance for her car (e.g., oil

changes) with an average annual cost of $516. A2065. Ms. Sears also occasionally incurs public transportation expenses for the children. A2065. Ms. [redacted] verified these expenses by reviewing historical bills and credit card and bank statements. *See* A2065.

Mr. Klisch acknowledges he incurred car repairs of $695.73 in 2016, A1512, and he budgets higher amounts than Ms. Sears does for his own car insurance ($1,800 per year), gas ($75 per month), and car repairs ($2,004 per year), A2231-A2233, which demonstrates that Ms. Sears' budgeted transportation expenses are reasonable and consistent with the family's historical practice.

The Court allocated fifty percent of Ms. Sears' described transportation expenses to the children and thus awarded $107.55 per month to the child support award for the children's transportation. *See* A1833, A1981-A1984.

f. Recreation.

During the marriage, the parties regularly took the children on expensive vacations. The children's vacations included trips to St. Kitts in the Caribbean, Miami, Arizona, Key Largo, Florida, and annual trips to Lake Tahoe. A753, A755; A825-A826; A1508. In addition, Mr. Klisch and Ms. Sears regularly took the children on multiple ski vacations each year, including trips to Breckenridge, Colorado, A495, A666, Trial Tr. (Sept. 17, 2018) p. 98, Canada, Trial Tr. (Sept. 17, 2018) p. 91-93, Park City, Utah, Trial Tr. (Sept. 17, 2018) p. 94-96, Big Sky,

Montana, Trial Tr. (Sept. 17, 2018) p. 97, and Aspen, Colorado. Trial Tr. (Sept. 17, 2018) p. 103; A1040. Prior to the parties' separation, Ms. Sears and her mother took the children (and [redacted] and her family) on a Disney Cruise. A496, A668.

Mr. Klisch admitted that he loves vacationing with the children, A1461-A1462, that he pays more for activities for the children on vacations than he does when home in Washington, DC, A1198, that he pays up to $700 per ticket for airfare, A1208, that he pays approximately $500 per night for lodging, A1208, and that he purchases annual ski passes for the children which cost $329 per child, A1210, and $700 for himself, A1280. On a ski trip to Aspen, Mr. Klisch purchased ski passes for the children which cost $700 per child. A1466. Mr. Klisch admits that he and Ms. Sears regularly vacationed with the children every Thanksgiving, Christmas, for two weeks each summer and at least two to three long weekends each year, including historically taking the children out of school for Martin Luther King, Jr. weekend and President's Day weekend to go on ski vacations, A1344-A1345, A1355, and taking a five-day ski vacation every year over the children's winter break. A1462. Mr. Klisch acknowledges that the parties sometimes rented a car on vacation. A1468; A1510; *see* SA36-SA39, A2193-A2196.

Ms. Sears' budget includes expenses for her to continue to take comparable vacations with the children. A2066-A2068. Ms. Sears expects to take three vacations with the children, which is consistent with the family's historical practice

and the Final Order's division of the children's school breaks and two weeks of summer vacation time with each parent. A337; *see* A1849-A1853. Ms. Sears budgeted $700 per person for airfare, $500 per night for lodging, $400 per day for activity expenses, $1000 per trip for dining out, and $2,000 per year for additional transportation expenses while on vacations (e.g., parking fees, taxis, car rentals). A2067; A424-A427. Ms. [redacted] reviewed the parties' bank and credit card statements from before the separation to verify these expenses. A337-A338; *see* Pl. SA5-SA15; SA20-SA27; SA36-SA43; A2193-A2196.

In preparing his own financial statement and his estimate of his vacation expenses, Mr. Klisch stated that he relied upon Ms. Sears' budget and expenses she included for vacation expenses, though he did not produce any documents to verify his budget or to contradict Ms. Sears' budget. A1467-A1468. Mr. Klisch budgeted $1,812 per month for vacation expenses, of which $1,208 was allocated to the children, which demonstrates that the $1,139.85 that the Court allocated to Ms. Sears' children's vacation expenses in its child support award is reasonable. *See* A2231-A2233; A1836; A1982. In addition, the Court's calculation of vacation expenses was based on an estimate of three vacations of five days each, *see* A1836, which is less than the amount of vacation time provided for in the custody schedule, *see* A1849-A1853, and provided by Ms. Sears' employer, *see* A2192,

further demonstrating that the child support award is certainly reasonable as it likely underestimates the actual vacation expenses.

In addition to taking many family vacations, throughout their lives the children have participated in many activities, events, and general entertainment and recreation with Mr. Klisch and Ms. Sears. The children participated in art classes and rock climbing, A488, attended theatre performances, A2067, A1211, went to the movies, A1512, went bowling, A1114, and went to the Renaissance Festival, Dave & Buster's, iFly, All Fired Up, and laser tag. A670-A671, A2067. The children went to amusement parks, A2068; A1472; A1523-A1524, they went zip lining, A1472, and they have plenty of toys in each home. A2068; A1198; A1460-A1461. The children regularly went to Nationals games with Mr. Klisch and Ms. Sears, including attending about twelve games in 2017. A1472; A1116; A1214; A1482-A1483; SA16-SA23. More recently, the children have participated in activities such as laser tag, rock climbing, trapeze camp, Cleveland Park Club summer camp, and going to the Building Museum. Trial Tr. (July 11, 2018) p. 11.

Ms. Sears' budget includes expenses for the children to continue to participate in similar activities, entertainment, and general recreation when they are in her care, totaling $927.44 per month. A2066-A2068; A428-A429, A431-A438. Ms. [redacted] verified these expenses by reviewing the parties' bank and credit card statements and published prices. A2066-A2068; A337-A338; *see* SA5-SA15;

SA20-SA27; SA36-SA43; A2193-A2196. The Court included $517.50 per month in its child support award for the children's recreation expenses when they are with Ms. Sears, which is reasonable for these children and consistent with the family's past practices.

g. Child Care.

From January 2012 until the parties' physical separation in March 2018, the parties employed [redacted] as a full-time nanny and general housekeeper. A139, A149; SA155-SA156; A477; A794-A795. [redacted] would pick the children up from school every day and be home with them until Ms. Sears or Mr. Klisch would arrive in the evening after work. A157; A820-A821. [redacted] would arrange playdates for the children and would take them to their activities. A157; A808-A810. Mr. Klisch paid almost all of [redacted]'s salary throughout her employment. A878. [redacted] was continuously employed full-time, even after the children began preschool and elementary school. A139, A149; SA155-SA156; A477; A794-A795; A1262-A1264.

Prior to the separation, [redacted] was an integral part of the children's lives. [redacted] and the children were attached to one another and the children had a relationship with [redacted]'s family. A796-A797; A825. The children were in [redacted]'s wedding. A796-A797. [redacted], along with her husband and daughter, went with Ms. Sears and the children on a Disney Cruise, A495, and [redacted]

vacationed with Mr. Klisch, Ms. Sears, and the children to Lake Tahoe, Miami, and Arizona. A825. Mr. Klisch or Ms. Sears would pay all of [redacted]'s expenses when she vacationed with their family. A828. On one occasion, [redacted] also vacationed with the children and Ms. Sears' mother. A911-A912.

In addition to providing childcare to the children, during the entire time she worked for the family prior to the separation, [redacted] also performed housework for the family, such as cleaning, organizing the house, doing the dishes, running errands, picking up prescriptions and dry cleaning, buying groceries, buying clothes for the children, buying birthday gifts for the children to give their friends, and purchasing other items for Mr. Klisch, the children, and the house. A878-A879; A933, A939; A1507. Mr. Klisch gave [redacted] one of his credit cards to use for purchases for his home. A939; A1507. [redacted] would occasionally take the children out to eat and charge those costs to Mr. Klisch's credit card, too. A940.

Starting in April 2018, after Ms. Sears moved from the marital home, Mr. Klisch continued to use [redacted] as a nanny and general housekeeper at his home. SA155-SA156; A875. Mr. Klisch continued to hire [redacted] to do "house chores and grocery runs and laundry, and if he needs any personal items" such as dry cleaning and purchasing vitamins. A875. While [redacted]'s hours had decreased

since the separation, Mr. Klisch continued to pay [redacted] a salary of $850 or $880 every two weeks. A876.

When Ms. Sears moved out of the marital home, she hired an au pair, [redacted], to provide care for the children during her custodial time so that the children would continue to have the same quality of care and consistency of home-based care that they had known their entire lives. A2159-A2167. [redacted]'s salary was $450 per week, or $23,400 annually, A2069-A2070; A2159-A2167, and Ms. Sears incurred payroll expenses of $612 per year for [redacted]'s employment. A2071. In addition, Ms. Sears provided room and board for [redacted] as part of her employment. A503. Ms. Sears testified that she would not have hired [redacted] if not for the children. A630.

Similar to the role that [redacted] served for the children before the separation, [redacted] helps to tidy the children's rooms and living spaces, she shops for groceries, and prepares dinner, in addition to picking up the children after school, taking them to activities and playdates, and generally caring for them on school days, during the summer, weekends when Ms. Sears must work, and on weekdays when school is closed. A500-A505; A696, A698-A703; A1566; *see* A2216-A2226. The children have developed a very good relationship with [redacted] and appear to love her and really value her role in their family and close proximity in their home. SA365.

The Court correctly determined Ms. Sears' childcare expenses were reasonable and appropriate for these children and consistent with the family's historical practices, and thus included $1,800 per month in the child support award for Ms. Sears' childcare expenses.

h. Gifts.

Ms. Sears' budget includes expenses for purchasing birthday gifts for the children to give to other children, gifts for Ms. Sears to give the children on their birthdays and holidays, and the cost of the children's birthday parties each year. A2074. [redacted] testified that historically she would help to buy gifts for the children to give to their friends using Mr. Klisch's credit card. A940. Mr. Klisch admitted that the parties historically would "stockpile toys because of holidays and birthday parties." A1198. Before the parties' separation, they would host birthday parties for the children where the cost of the catered food alone, exclusive of the hired entertainment, was approximately $300 per party. A1458-A1459.

The Court included in the child support award $22.50 per month for birthday gifts that the children will need to purchase for other children, $180 per child per year for gifts for the children's birthdays and for Christmas, and $675 per child per year for the costs of the children's birthday party celebrations. *See* A1841-A1843; A1981-A1982. All of these awarded amounts are for the benefit of the children, are

reasonable needs for these children, and are consistent with the family's historical spending on these expenses.

i. Personal Care.

Ms. Sears' budget includes personal care products for the children, such as shampoo, and other toiletries, based on a review of historical purchases at Walgreens and CVS reflected on the parties' bank and credit card statements. A2075-A2076. The Court awarded Ms. Sears $7.65 per month to purchase such personal care items for the children, which are reasonable and necessary expenses and consistent with the family's past practices. *See* A1843; A1981-A1982.

F. Children's Expenses to be Shared by the Parties

Ms. Sears' budget includes certain expenses for the children that would be incurred regardless of who had custody of the children, labeled as "Children's Shared Expenses." *See* A2052-A2082, A2102-A2116. These expenses may vary, so the Court determined that the parties would share these expenses proportionally with their respective incomes (90% to Mr. Klisch and 10% to Ms. Sears) when these expenses are incurred. *See* A1817-A1818, A1820. Ms. Sears' budget estimates that these shared expenses will total approximately $2,103.42 per month. *See* A2102.

a. Food.

On occasion, the children have historically purchased and continue to purchase lunch at school, which costs on average $12.92 per month. *See* A2103. Ms. [redacted] verified these expenses on Ms. Sears' credit card statements. The Court included the children's school lunch expenses as expenses that the parties will share proportionally with their respective incomes (90% to Mr. Klisch and 10% to Ms. Sears) when these expenses are incurred.

b. Clothing.

Every year the children have purchased and continue to purchase school-branded clothing, which includes long-sleeve t-shirts and short-sleeve t-shirts, costing approximately $80 per year. *See* A2104.

The children participate in many activities which require special clothing and equipment, including swim lessons, golf, flag football, basketball, and skiing. A440-A441; A495, A666. The children have participated in these or similar activities for many years and are expected to continue participating in activities. These activities and the associated expenses may vary seasonally, but Ms. [redacted] estimated an average expense of $361 per year, not including ski and golf equipment, based on a review of receipts. A2104.

The Court included the costs of the children's school clothing and sports clothing and equipment as expenses that the parties will share proportionally with their respective incomes when these expenses are incurred.

c. Medical.

The children's medical expenses are the largest line item of shared expenses in Ms. Sears' budget, comprising approximately $1,389.16 of the $2,103.42 per month of children's shared expenses. A2102; A2105. Ms. Sears provides health insurance for the children on her employer-provided plan and incurs an incremental increase in cost to provide this coverage. A180; A331-A332; A1531; A2105; A2191-A2192; SA44-SA56. Expenses are incurred every year for the insurance policies' deductibles, appointment co-pays, and prescription co-pays. A2105-A2107.

Both parties agreed that the children would attend therapy and that the children would go to therapy approximately once per week. A281-A288; SA161; A333-A334; A2112. Mr. Klisch agreed that the parties should pay for medical expenses as they are incurred. A1203-A1204.

The Court included the children's medical expenses, which includes the costs for the children's health insurance, co-pays, prescriptions, and other unreimbursed or uninsured medical, dental, and mental health expenses, as

expenses that the parties will share proportionally with their respective incomes when these medical expenses are incurred.

d. Education.

Ms. Sears and Mr. Klisch must purchase school supplies for the children. A2110. Ms. [redacted] verified these expenses via email invoices. *See id.* The parties had historically participated in giving gifts to the children's teachers at school and this is expected to continue. *See* A438-A439; A2110. The children obtain school photos every year, which cost approximately $100 total per year. Pl. A2069-A2070. The children participate in field trips at school that typically require some expense. *See* A2069-A2070.

The Court included these variable school expenses and fees for the children in the category of expenses that the parties will share proportionally with their respective incomes when they are incurred.

e. Extracurricular.

The parties' older [redacted], enjoys art, music, skiing, tennis, golfing, and swimming. SA149. The parties' younger [redacted], enjoys football, baseball, and sports generally. SA162. Prior to the parties' separation, the children did baseball, basketball, flag football, swim lessons, art classes, and climbing. A487-A488; A671; A1110-A1111; A1158; A1190; A1218-A1219. The children also

participated in golf lessons and golf and baseball clinics, which Mr. Klisch paid for. A1143; A1116; A1474.

Ms. Sears' expects that the children will continue to participate in these same activities or similar activities at a frequency of two to three activities per season. A2112-A2113; *see* A2217-A2226.

Prior to the parties' separation, the children also attended camps during the summer, including Kids' Elite camp, golf camp, Cleveland Park camp, and trapeze camp. A1083; A1120; A1218-A1219; A1473-A1475. Ms. Sears expects that the children will continue to attend camps during some weeks of the summer. A2112-A2113.

The Court included the costs of the children's extracurricular activities, lessons, and summer camps, as expenses the parties will share proportionally with their respective incomes when the expenses are incurred.

f. Personal Care.

The children need haircuts approximately once every six weeks and each haircut costs approximately $25. A2115. The Court included the cost of the children's haircuts as expenses that the parties will share proportionally with their respective incomes when the expenses are incurred.

G. Need for the Appointment of a Parent Coordinator

Ms. Sears and Mr. Klisch recognized that they experience a significant amount of conflict while co-parenting and they each requested that the Court appoint a parent coordinator to help facilitate their co-parenting. A297-A298; A307-A308; SA272. [redacted], Ph.D., one of Mr. Klisch's expert witnesses, has served as a parent coordinator and explained to the Court in great detail that parent coordinators are usually appointed in cases where there is conflict between the parents and the role of the parent coordinator is to try to improve co-parent communication and sometimes to make certain decisions for the parents when they are unable to agree. Trial Tr. (Oct. 19, 2018) p. 55-72; Trial Tr. (Sept. 28, 2018) p. 168-169. Mr. Klisch requested that the costs of the parent coordinator be split equally between the parties. SA276. Ms. Sears requested that the costs of the parent coordinator be shared proportionally with the parties' respective incomes, with Mr. Klisch paying 90% and Ms. Sears paying 10% of the costs.

Summary of the Argument

The Court's child support order providing $7,562 per month in basic child support to Ms. Sears, and ordering Mr. Klisch and Ms. Sears to share certain other variable children's expenses proportionally with their respective incomes (with Mr. Klisch paying 90% and Ms. Sears paying 10% of such expenses), was soundly supported by evidence in the record, which demonstrated that the child support

award was based upon the children's reasonable needs and the family's actual expenses and lifestyle. Similarly, the Court's order requiring Mr. Klisch to pay 75% and Ms. Sears to pay 25% of the costs for their parent coordinator was a decision supported by the evidence and a proper exercise of the Court's discretion. The Court correctly applied the law and the Final Order and Judgment of Absolute Divorce, as amended by the Order Amending Child Support Order, should be upheld.

Argument

1. Standard of Review for Child Support Decision.

In child support cases, "[t]he trial court has broad discretion in making child support decisions. Absent a showing of abuse of that discretion, such decisions, both under the statutory guideline and independent of the guideline, will not be disturbed on appeal." *Lasche v. Levin*, 977 A.2d 361, 365 (D.C. 2009) (*quoting Galbis v. Nadal*, 734 A.2d 1094, 1100 (D.C. 1999)); (*citing Slaughter v. Slaughter*, 867 A.2d 976, 977 (D.C. 2005)); *see also, e.g. Saxon v. Zirkle*, 97 A.3d 568 (D.C. 2014); *Ford v. Castillo*, 98 A.3d 962 (D.C. 2014); *Ford v. Snowden*, 145 A.3d 509 (D.C. 2015).

The Court of Appeals defers "to the trial court's findings of fact unless they are 'plainly wrong or without evidence to support [them].'" *Saxon v. Zirkle*, 97 A.3d 568, 571 (D.C. 2014) (*quoting* D.C. Code § 17-305(a) (2012 Repl.)); *see also,*

Ford v. Snowden, 145 A.3d 509, 516 (D.C. 2015) (Court of Appeals must defer to the trial court's factual findings…unless there is no credible evidence on the record to support the finding).

The Court of Appeals presumes that the trial judge knew and applied the proper legal standards. *Saxon v. Zirkle*, 97 A.3d 568, 573 (D.C. 2014); (*quoting Wright v. Hodges*, 681 A.2d 1102, 1105 (D.C. 1996); (*citing In re C.T.*, 724 A.2d 590, 597 (D.C. 1999)).

2. Standard of Review for Parent Coordinator Decision.

Similarly, the Court of Appeals reviews the trial court's allocation of the costs of a parenting coordinator, who is appointed to work with the parties, for abuse of discretion. *Jordan v. Jordan*, 14 A.3d 1136, 1153 (D.C. 2011) (*citing Beraki v. Zerabruke*, 4 A.3d 441, 447 (D.C. 2010); *Slaughter v. Slaughter*, 867 A.2d 976, 977 (D.C. 2005)).

3. The Court's Approach to Calculating Child Support is Supported by Public Policy and the General Construct of Child Support Law in the District of Columbia.

In the District of Columbia, both parents "have an unqualified obligation to contribute to the support of their children." *Wagley v. Evans*, 971 A.2d 205, 208 (D.C. 2009) (*quoting, Burnette v. Void*, 509 A.2d 606, 608 (D.C. 1986)). To accomplish this, since the passage of the Child Support Guideline Revision Amendment Act of 2006, the District of Columbia has implemented an "income

shares" model for determining child support and the Child Support Guideline is presumptive for parents who have a combined income of up to $240,000 per year. *See* Committee on the Judiciary, Council of the District of Columbia, REPORT ON BILL 16-205, "CHILD SUPPORT REVISION ACT OF 2006," at 5 (Feb. 28, 2006).

The Maryland child support guidelines are similarly based upon the income shares model. *See Voishan v. Palma*, 609 A.2d 319, 321 (Md. 1992). "The conceptual underpinning of this model is that a child should receive the same proportion of parental income, and thereby enjoy the standard of living, he or she would have experienced had the child's parents remained together." *Voishan*, 609 A.2d at 321 (*citing* Maryland Senate Judicial Proceedings Committee, *Bill Analysis*, Senate Bill 49 (1989); Robert G. Williams, "Child Support Guidelines: Economic Basis and Analysis of Alternative Approaches," *Improving Child Support Practice* I–12 to I–13 (A.B.A.1986)); *see also*, REPORT OF THE DISTRICT OF COLUMBIA CHILD SUPPORT GUIDELINE COMMISSION, at 14 (Dec. 2013). "Accordingly, the model establishes child support obligations based on estimates of the percentage of income that parents in an intact household typically spend on their children." *Voishan*, 609 A.2d at 321.

In determining child support using an income shares model, the Court determines the basic child support obligation that corresponds with the parties' combined annual gross income and then divides this basic child support obligation

between the parents in proportion to each of their adjusted gross incomes. *See* D.C. Code § 16-916.01(f), (q); *Voishan*, 609 A.2d at 322.

The Child Support Guideline applies presumptively up to combined gross incomes of $240,000 per year. *See*, D.C. Code § 16-916.01(c)(6), (h). Thereafter--that is, in "above-Guidelines" cases--D.C. Code § 16-916.01(h) provides:

> The guideline shall not apply presumptively in cases where the parents' combined adjusted gross income exceeds $240,000 per year. In these cases, the child support obligation shall not be less than the amount that the parent with a legal duty to pay support would have been ordered to pay if the guideline had been applied to combined adjusted gross income of $240,000. The judicial officer may exercise discretion to order more child support, after determining the reasonable needs of the child based on actual family experience. The judicial officer shall issue written factual findings stating the reasons for an award of additional child support.

Thus, the Guideline provides a minimum amount of child support that must be ordered in above-Guidelines child support cases. The Guideline does not create a presumption against an additional award of child support in above-Guidelines cases over and above the minimum amount of child support. *See Davis v. Kern*, 2006 DRB 2159 (Sup. Ct. Mar. 30, 2015, Epstein J.), slip. op. at 4; *see also, Jackson v. Proctor*, 801 A.2d 1080, 1091 (Md. 2002) (recognizing that the Court clearly has the discretion to award more child support than the maximum amount calculated under the Guidelines; the Court's discretion in determining child support is not capped); *Voishan v. Palma*, 609 A.2d 319, 323 (Md. 1992).

The child support award is intended to ensure a decent standard of living for the child and must reflect the income of the parent with the obligation to pay support. *See Mims v. Mims*, 635 A.2d 320, 323 (D.C. 1993) ("a proper calculation of the costs of rearing a child is dependent upon the income of the parents and is a function of that income; it is inappropriate to attempt to establish the amount of the financial needs of the child as though that figure were independent of parent income") (*citing* REPORT OF THE SUPERIOR COURT CHILD SUPPORT GUIDELINES COMMITTEE 10 (April 1988)); *see also, Nevarez v. Nevarez*, 626 A.2d 867, 872 (D.C. 1993). In fact, Federal law dictates that each state must create child support guidelines that "must take into account all earnings and income of the parent with a duty to pay support." REPORT OF THE DISTRICT OF COLUMBIA CHILD SUPPORT GUIDELINE COMMISSION, at 4-5 (Dec. 2013) (*citing* 45 C.F.R. § 302.56(c)(1)).

A long-standing child support principle in the District of Columbia "is that the child is entitled to a level of support commensurate with the income and lifestyle of the parents." *Galbis v. Nadal*, 626 A.2d 26, 31 (D.C. 1993). Citing the then-applicable child support statute, D.C. Code § 16-916.1(b)(3), the Court of Appeals in *Galbis* recognized that the Court was required to consider the relative standard of living of each of the child's households and that the "child shall not bear a disproportionate share of the economic consequences of the existence of [two]

households rather than [one]," *Galbis*, 626 A.2d at 31, and that "the child shall not live at a standard substantially below that of the noncustodial parent." *Id.*

In his brief, Mr. Klisch cites to and relies upon post-judgment child support modification cases, such as the cases of *Prisco v. Stroup*, 947 A.2d 455 (2008), and *Kennedy v. Orszag*, 2006 DRB 2583 (2006), in an attempt to argue that the trial court should have awarded Ms. Sears only the statutory minimum amount of required child support. These post-judgment modification cases upon with Mr. Klisch relies, however, are distinguishable from the instant case which is an initial award of child support and due to clear differences just based upon the known facts in the cases.

In *Prisco*, the Appellant-mother filed a motion seeking an increase in the Appellee-father's child support obligation shortly after she had already received an increase in her child support award from the Circuit Court in Fairfax County, Virginia. The trial court found that she had not proven a substantial and material change in circumstances warranting a further upward modification of child support since the entry of the most recent modified child support order. In addition, the Court considered that the Appellee-father was already paying the entire cost for a number of the children's expenses directly in that case, which Mr. Klisch was not doing and did not propose to do here.

Similarly, the trial court opinion in *Kennedy* relied upon by Mr. Klisch is also distinguishable from the instant case. *Kennedy* also concerned a mother's motion to modify child support, filed six years after the parties had entered into an agreement concerning child support and payment of their children's expenses and were divorced. The father in *Kennedy* had experienced a significant increase in income post-agreement, but the mother was unable to prove that a direct payment of child support was warranted when the parties' original agreement did not require a direct payment of child support and the father was able to (and was ordered to) pay the children's expenses directly, rather than via a child support payment to the mother. The instant case is distinguishable since the Court's child support award was an initial order entered at the time of the parties' divorce and was based upon the parties' disparate incomes and the family's lifestyle during the marriage. The instant case is also distinguishable because Mr. Klisch has not been paying for many of the evidenced children's expenses directly, and the underlying children's expenses that Ms. Sears presented and which warranted and supported the child support award created an appropriate basis for the direct payment of child support and the requirement that the parties share proportionally the children's shared expenses as they are incurred.

In this case, the trial court appropriately constructed the child support award by following the same approach and methodology that is applied in the income

shares model that is the basis for child support awards in the District of Columbia. Since this was an above-Guidelines case, the Court determined the basic child support obligation by considering the children's actual expenses, rather than the statutorily determined amount, and then allocated this basic child support obligation between Mr. Klisch and Ms. Sears in proportion to each of their adjusted gross incomes. This same methodology was applied by the Court to the direct children's expenses which Ms. Sears pays for in her own home, resulting in the monthly child support award, and to the children's expenses that can be shared by the parties when the expenses are incurred. This methodology is an exact replication of the income shares model in a higher-income family yet with the nuance and appropriate discretion required by basing the basic child support obligation on the children's actual and reasonable needs, rather than determining the basic child support obligation only based on a mathematical formula. *See Voishan*, 609 A.2d at 325. Therefore, the trial court's approach to child support in this case was necessarily an appropriate exercise of the court's discretion.

In addition, the Court's methodology appropriately reflected and gave appropriate weight to Mr. Klisch's income, which is significantly greater than Ms. Sears's income. The child support award essentially requires Mr. Klisch to pay his proportional share of the children's expenses and therefore appropriately "takes into consideration all earnings and income of the noncustodial parent," 45 C.F.R. §

302.56(c)(1)(i), as is required by Federal law and thus was not an abuse of the Court's discretion.

Moreover, Mr. Klisch's requested relief – that the Court order only the minimum amount of child support required by the Guidelines and to share other expenses equally – would have been an abuse of discretion and an error in the application of the law, because such an award would not have entitled the children "to a level of support commensurate with the income and lifestyle of" Mr. Klisch, *Galbis*, 626 A.2d at 31, would have caused the children to "live at a standard substantially below that of" Mr. Klisch, *id.*, and would not have reflected the income of the parent with the obligation to pay support. *See Mims*, 635 A.2d at 323.

4. The Child Support Award was Appropriately Based on the Reasonable Needs of the Children Based on Actual Family Experience.

In determining whether to award child support greater than the minimum amount of support that is required, the Court must take into account "the reasonable needs of the child[ren] based on actual family experience." D.C. Code § 16-916.01(h). Notwithstanding this, in another above-Guidelines case, the D.C. Court of Appeals has held "that the trial court is not required to base a child support award on the child's documented expenses where the noncustodial parent's income exceeds the highest amount to which the Guidelines presumptively apply." *Upson v. Wallace*, 3 A.3d 1148, 1158 (2010) (*citing Galbis v. Nadal*, 626 A.2d 26,

31 (D.C. 1993). "Rather, the court can award a level of support commensurate with the income and lifestyle of the noncustodial parent." *Id.*

Another principle guiding the Court's award of child support is that "[a] parent has the responsibility to meet the child's basic needs, as well as to provide additional child support above the basic needs level." D.C. Code § 16-916.01(c)(3). Basic needs include a parent's "direct expenditures for food, shelter, clothing, transportation and other reasonable needs." *Colonna v. Colonna*, 855 A.2d 648, 651 (Pa. 2004) (recognizing that in Pennsylvania "[e]ach parent is required to contribute a share of the child's reasonable needs proportional to that parent's share of the combined net incomes.") Depending upon the income of the parents, a child's additional reasonable needs may include "attending summer camp, enjoying access to a recreational vehicle, receiving generous gifts, possessing adequate and modern furniture, vacationing with relatives" and social/entertainment expenses. *Bagley v. Bagley*, 632 A.2d 229, 239 (Md. 1993); *see also, Benvenuto v. Benvenuto*, 389 A.2d 795, 799 (1978) (upholding a child support award which was based, in part, on the child's needs including the costs of a three-bedroom apartment and a housekeeper); *Jackson v. Proctor*, 801 A.2d 1080, 1092 (Md. 2002) (finding that in a family where the father earned $500,000 per year, "[n]ice housing with quality furnishings, child care, private school tuition, tutoring, summer camp, lessons, recreational and cultural activities, toys,

vacations, and other luxuries are among the privileges generally afforded to children in families with earnings comparable to the earnings in this case.").

The reasonable needs of the child(ren) are necessarily subjective and a reflection of the incomes and financial resources available to the parents. *See Voishan*, 609 A.2d at 326. The concept of "need" in the context of determining child support is broadly recognized as "relative, almost metaphysical, and varies with the particular circumstances of the people involved, as well as their culture, values, and wealth." *Smith v. Freeman*, 814 A.2d 65, 83 (Md. 2002) (summarizing cases from Florida, Vermont, and California in supporting this concept). It is appropriate for the Court to consider the lifestyle of the parent with the obligation to pay child support, including the type of home where the parent lives, the meals the parent enjoys, and the parent's vacations and other activities, in determining the reasonable needs of the child(ren). *Davis v. Kern*, 2006 DRB 2159 (Sup. Ct. Mar. 30, 2015, Epstein J.), slip. op. at 8.

The child support award should be informed by actual expenses and those expenses must be primarily for the benefit of the child(ren). *Prisco v. Stroup*, 947 A.2d 455, 461 (D.C. 2008). The actual expenses may not necessarily create a cap on the amount of child support, though, because the Court's focus is on the reasonable needs of the child, which may exceed the expenses that the custodial parent can actually afford. *Davis v. Kern*, 2006 DRB 2159 (Sup. Ct. Mar. 30, 2015,

Epstein J.), slip. op. at 9; *Jackson v. Proctor*, 801 A.2d 1080, 1090-91 (Md. 2002). In addition, while child support should not enrich the custodial parent, the fact that the custodial parent may derive some benefit from child support and the children's expenses that it is used to pay is perfectly acceptable and expected. *Davis v. Kern*, 2006 DRB 2159 (Sup. Ct. Mar. 30, 2015, Epstein J.), slip. op. at 10-11; *Jackson*, 801 A.2d at 1092.

The child support award in this case was calculated based on the reasonable needs of the children, based on actual family experience, and based on expenses that primarily benefit the children. The Court did not award child support based on Ms. Sears' expenses, or based on any budget deficit that she may have, contrary to Mr. Klisch's assertions. Rather, the Court calculated the award of monthly child support based on certain reasonable and actual children's expenses incurred directly by Ms. Sears, including costs of housing the children, food for the children, clothing for the children, transportation for the children, vacations and other recreational activities for the children, child care, gifts for and related to the children, and personal care items for the children. The Court carefully scrutinized Ms. Sears' budget and the final child support award was based on children's expenses that were reasonable for this family and their financial circumstances, were supported by testimony and/or documentary evidence, were supported by the

family's historical spending and lifestyle, and provided clear and necessary benefits for the children.

In addition, the Court then ordered each party to pay his or her proportional share of children's expenses that could be shared, including the cost of the children's health insurance, medical expenses, therapy expenses, school lunches, field trips, school supplies and other fees, school uniforms, sports equipment, extracurricular activities, lessons, summer camps, and haircuts. Every shared expense that the Court ordered the parties to share, proportionally with their respective incomes, was supported by testimony and/or documentary evidence, were expenses that were actually incurred by the parties during the marriage and continuing thereafter, and were solely and clearly for the benefit of the children.

5. The Court Appropriately Determined the Parties' Incomes for the Purposes of Calculating Child Support.

The Court must consider the child support obligor's income and ability to pay child support and the recipient parent's income in determining the appropriate child support award. *See Galbis*, 626 A.2d at 31. Mr. Klisch earned $2,255,107 in gross employment income, *see* A2184, and $66,575 in investment dividend income in 2017, *see* A2197, totaling $2,321,682 that the Court determined to be Mr. Klisch's gross income for purposes of calculating child support. In addition, in 2017 Mr. Klisch received interest income of $5,915, taxable refunds of $43,187, and capital gains of $216,794, which were not included in his gross income for

calculating child support. *See* A2197-2198. Mr. Klisch readily conceded that he had the ability to pay the full amount of child support that Ms. Sears requested from the trial court, A360; SA249, and Mr. Klisch reported that he had a budget surplus (after payment of expenses) of $71,678 per month. A2231-A2233. The Court's monthly child support award of $7,562 is only approximately 10.5% of Mr. Klisch's budget surplus.

Even in cases where both parties are relatively high earners, it is still appropriate for the Court to award child support to the lesser earner, especially when there is a great disparity between the parties' incomes. *See Jane Doe VI v. Richard Roe VI*, 736 P.2d 446, 456 (Haw. 1987).

In post-trial submissions to the Court, Mr. Klisch argued for the first time that income should be imputed to Ms. Sears because she was voluntarily impoverishing herself. *See* A1977-A1981 The Court may impute income to a parent for the purposes of calculating child support only if the Court "finds that the parent is voluntarily unemployed or underemployed as a result of the parent's bad faith or deliberate effort to suppress income, to avoid or minimize the parent's child support obligation, or to maximize the other parent's obligation…." D.C. Code § 16-916.01(d)(10); *Saxon v. Zirkle*, 97 A.3d 568, 572 (D.C. 2014).

The Court correctly determined that the record in this case did not support Mr. Klisch's request that income be imputed to Ms. Sears. From the birth of the

parties' first child until one month prior to the parties' separation, Ms. Sears worked at a seventy percent schedule for a large law firm. A478, A506. At the time of the trial, Ms. Sears was working at an eighty-five percent schedule. A2157. This position was not part-time, but rather meant that Ms. Sears' required billable hours were eighty-five percent of "full-time" colleagues and allowed her to better manage and balance her work and home-life responsibilities. It was not realistic to expect Ms. Sears to be able to work at a "full-time" capacity of a lawyer at a big law firm, especially after the parties' separation. *See* A722-A723; A507-A508. Ms. Sears' level of employment was based on a realistic assessment of how she could increase her chances of having success in her career, balance her parenting and work responsibilities, and reduce her work travel requirements so that she could be available for the children during her custodial time. There was no evidence to suggest that Ms. Sears' change in employment was done in bad faith, or for the purpose of maximizing Mr. Klisch's child support obligation. *Cf.* D.C. Code § 16-916.01(d)(10). Therefore, the Court appropriately determined that Ms. Sears' gross annual income was $266,135, comprising of her employment income and investment income.

Given the Court's findings concerning the parties' incomes, the Court's decision to order Mr. Klisch to pay his 90% proportional share of the children's expenses that Ms. Sears incurs in her home via a monthly child support payment,

and that the parties share proportionally with their incomes other shared children's expenses that vary on a monthly basis, was fair and appropriate. This is especially true considering that Mr. Klisch's evidenced total income in 2017 was higher than $2,321,682, the level of income used by the Court in its child support calculation, *see* A2197, and Ms. Sears' actual income decreased from $266,135, the level used by the Court in its calculation, *see* A1530, thereby increasing even further the great disparity between the parties' relative incomes. Furthermore, as Mr. Klisch fully recognized, he can afford to pay the ordered monthly child support payment, which is less than four percent of his gross income. In contrast, Ms. Sears, potentially on the verge of a global recession, needs to receive the monthly child support payment so that the children do not "bear a disproportionate share of the economic consequences of the existence of [two] households rather than [one]," *Galbis*, 626 A.2d at 31, and to ensure that when they are in Ms. Sears' custody, the children do "not live at a standard substantially below that of" Mr. Klisch. *Id.*

6. The Court Appropriately Exercised its Discretion in Ordering the Parties to Share the Costs of the Parent Coordinator with Mr. Klisch Paying 75% and Ms. Sears Paying 25% of those Fees.

The Court has the authority, pursuant to Super. Ct. Dom. Rel. Rule 53, to appoint a parenting coordinator to work with parents and help to facilitate their co-parenting. *Jordan v. Jordan* 14 A.3d 1136, 1151-(D.C. 2011). The appointed parent coordinator may be granted the ability to make day-to-day decisions about

the children, if the parents are unable to reach an agreement. *Jordan*, 14 A.3d at 1157. It may be appropriate for the Court to appoint a parent coordinator in cases where the Court has determined it is in the best interest of the child(ren) that the parents share joint legal custody, however the parties' relationship is so "fraught with conflict" and the "parties are not able to reach joint decisions regarding the children" on their own. *Jordan*, 14 A.3d at 1155. The trial court in this case made such a determination for Mr. Klisch and Ms. Sears that they should share joint legal custody but would need a parent coordinator to help facilitate their co-parenting. Moreover, both Mr. Klisch and Ms. Sears recognized this, as they each were requesting that the Court appoint a parent coordinator, although with varying terms for the appointment. A297-A298; A307-A308; SA272.

The Court also has the authority to apportion the fees and other costs of the parent coordinator between the parents. *Jordan*, 14 A.3d at 1160-61. In *Jordan*, the trial court ordered that the fees for the parent coordinator be shared between the parties in roughly their proportional shares of their respective income, despite an argument made that one party would necessitate more of the services of the parent coordinator. The Court of Appeals determined that this decision was "fair and reasonable, and it certainly did not constitute an abuse of the Court's discretion." *Jordan*, 14 A.3d at 1160.

Conclusion

The Court's child support award in this case is reviewed for an abuse of discretion and thus must be upheld and affirmed. The Court correctly applied the law in setting child support based on the reasonable needs of the children, based on actual family experience, and in ordering Mr. Klisch to pay his proportional share of the children's expenses. The Court made clear and detailed findings of fact, each and every one of which were supported by substantial testimony and documentary evidence. The evidence was based on the family's historical spending and lifestyle and the overall expenses were certainly reasonable and appropriate for these children. The trial court's child support award should be affirmed as it allows the children some modest ability to "receive the same proportion of parental income, and thereby enjoy the standard of living, [they] would have experienced had the child[ren]'s parents remained together." *Voishan*, 609 A.2d at 321. Similarly, the Court's decision to allocate the fees of the parent coordinator between the parties with Mr. Klisch paying 75% and Ms. Sears paying 25% of the fees was a proper exercise of the Court's discretion and thus should not be overturned.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2020**,** I have caused the foregoing Brief to be served via electronic filing to:

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I further certify that, consistent with the District of Columbia Court of Appeals notice of March 13, 2020, as updated by the Orders dated March 16, 2020, and March 23, 2020, paper copies of the foregoing Brief shall not be filed with the Court or served upon Counsel for Appellant.

/s/ Erin C. Golding
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