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motion on September 27, 2024. After considering the parties' written submissions, the court granted the motion to reopen the evidence on September 30, 2024, and requested that the clerk notice the matter for a 2-hour hearing.

At the hearing on November 27, 2024, the court learned that neither party had received its September 30, 2024, order. Nonetheless, both parties were prepared to move forward with the court's receipt of additional evidence. Ms. Bickford raised objections regarding the relevance and cumulative effect of the video that was the crux of Mr. Bradeen's motion to reopen the evidence but stipulated to the authenticity of the video. The court denied Ms. Bickford's objections and received the video, as well as supplemental testimony, in evidence on November 27, 2024.

The parties also submitted a stipulated amended judgment of parental rights and responsibilities on November 1, 2024. In that stipulation, which is incorporated below, the parties resolved their issues of residency and contact, child support, expenses (past and future), and attorney's fees, leaving only the issues of religious and medical decision making for the court's determination. After carefully considering the admissible and credible evidence, the court FINDS and ORDERS as follows:

Background

The parties are the biological parents of Ava Bickford-Bradeen, born January 12, 2013. They were never married, and they separated before Ava was born. Mr. Bradeen now lives with his partner and his other daughter, Harper. Both Ava and Harper live with him half-time, on the same schedule.

Ms. Bickford lives alone, except when Ava is with her. Both parents love Ava tremendously.

I. Ava's Participation in Calvary Chapel Church

In May 2021, Ms. Bickford started attending Calvary Chapel Church in Portland. She did not seek Mr. Bradeen's input regarding Ava's attendance at church, which Mr. Bradeen learned about through Ava's involvement in a church event. Mr. Bradeen wanted to know more about the church and its teachings and asked Ms. Bickford for additional information. Ms. Bickford's replied by providing the name of the church she and Ava were attending, without any further context.

Mr. Bradeen conducted research to educate himself about the teachings of the church. Because the sermons are posted on Facebook, he was able to watch approximately 50-60 hours of services. What he observed concerned him. The church, as described by its pastor, teaches the Bible "verse by verse, chapter by chapter."

In practice, this means that the sermons that Ava hears contain messages about warfare, fallen angels, and eternal suffering. As the church studies the Old Testament, focus is placed on the physical conflict depicted in those chapters. There are images of warfare displayed on the screens in the sanctuary. The pastor also, as he testified, “preaches a vivid description of hell,” including messages about the “wailing and gnashing of teeth,” “burning and torment,” and “perpetual pain and regret.” The church teaches that people can only be saved by meeting god on god’s terms.

Through the church, Ava has also been taught that there will be a second coming of Christ, which will involve seven years of hell on earth under the reign of the “beast” called the anti-Christ. These messages are reinforced through Calvary Chapel’s curriculum for children, which includes workbooks with images, including images of “fallen angels,” or demons.

Mr. Bradeen has observed Ava’s expressions of fear and anxiety associated with the teachings of Calvary Chapel. Ava asks Mr. Bradeen a lot of questions, such as who in the family will be in heaven and who will be in hell, and why Mr. Bradeen and Harper will not be in heaven with her. Ava has had panic attacks in Mr. Bradeen’s presence when talking about this subject. Ava also leaves notes around Mr. Bradeen’s house for him to find because she believes that the rapture will be coming soon, and she is concerned that he will be left behind.

Mr. Bradeen approached Ms. Bickford regarding his concerns and her decision to bring Ava to the church’s services without first discussing this decision with him. Ms. Bickford’s response was that she lived under god’s law, not the state’s law or earth’s law. Ms. Bickford then began making other unilateral choices surrounding Ava’s participation in the church and engaged in practices to keep the scope of Ava’s involvement from Mr. Bradeen. For example, Mr. Bradeen learned that Ava was going to be baptized at the church through a third party. Notably, when he reached out to Ms. Bickford about the issue, she placed him on speaker, with Ava present, to discuss the issue.

On another occasion, Ms. Bickford took Ava out of school, explaining to Mr. Bradeen that she and Ava were visiting the state capital. Although this was partially true, what she did not explain was that she and Ava went to the state capital with other church members to hold an anti-abortion protest.

Most recently, Ms. Bickford allowed Ava, who is 11, to attend an overnight teen retreat at a private residence. This church-sponsored function involved Ava spending the night at a location that was not disclosed to Mr. Bradeen, and she was not allowed to have her phone while at the retreat. Mr. Bradeen only found out about the retreat through his review of the church’s Facebook page.

Ms. Bickford, while withholding information about Ava's participation in events that may conflict with Mr. Bradeen's values, insists that her values be reinforced even when Ava is with Mr. Bradeen. For example, the court finds credible Mr. Bradeen's testimony that whenever he voices concern about Ava's participation in the church, Ms. Bickford doubles down, sending Ava to Mr. Bradeen's house with more religious paraphernalia than typical. In addition, on one occasion, Ms. Bickford objected to Ava wearing a t-shirt that Mr. Bradeen gave her because Ms. Bickford felt that the shirt portrayed the "Black Lives Matter" message. Ms. Bickford also started to advocate for homeschooling Ava, as she believes that public schools pose a danger to children. Ironically, her explanation is that she "wants to be able to review what her child is learning," but she has not given Mr. Bradeen the option to weigh in on events that Ava attends.

Ava attends multiple weekly church services with Ms. Bickford. On one week, she attends Wednesday evening services and on the next week she attends Friday and Sunday services. The church holds two services on Sundays, one in the morning and one in the evening, both of which Ava and Ms. Bickford attend. The Friday evening services involve a "rule over addiction ministry," which addresses any life controlling issue, including pornography, eating disorders, and drug or alcohol addiction. Ava does not currently attend those services, attending a children's group on Friday nights instead. She has, however, worn a sweatshirt that contains wording about the addiction ministry and has attended services that involve "testimonials." These testimonial sessions occur once a month on Sunday evenings and involve married couples sharing their story of how they were "saved" and from what they were saved. Stories of childhood sexual and physical trauma, gay and lesbian relationships, and infidelity have been discussed during these sessions.

II. Opinions of Dr. Janja Lalich

Janja Lalich has a Ph.D. in human and organizational systems and is an expert on "self-sealing systems and high control groups." She researches recruitment and indoctrination processes, rules and regulations, and the impact of membership of high control groups. She has published six books and several research papers on the topic.

The parties stipulated that Dr. Lalich is an expert on "cults." In her post-hearing brief, however, Ms. Bickford made arguments regarding the admissibility and reliability of Dr. Lalich's testimony. For example, she questions whether Dr. Lalich is an expert on "cults" despite already stipulating that Dr. Lalich was so qualified. She also attempts to wordsmith the term "cult," suggesting that there is a difference between cults and closed

social systems. Based on Dr. Lalich's testimony, the court finds no appreciable difference for the purposes of this case.¹

Ms. Bickford's post-hearing brief also suggests that Dr. Lalich's testimony does not meet the threshold level of reliability for admissibility. This argument, however, cannot be made for the first time in a post-hearing brief.² No challenge having been made to the reliability or admissibility of Dr. Lalich's testimony before or at trial, the court rejects such arguments now.

Dr. Lalich testified that within closed social systems there is customarily a charismatic and authoritarian leader who delivers the message of a transcendent belief system – a belief system that offers answers as to the past, present, and future and promises some sort of salvation. Typically, there is also an indoctrination period and a demand for total commitment, i.e., unquestioning loyalty to the group and the organization.

After studying Calvary Chapel, Dr. Lalich came to the opinion that it is a prime example of a closed social system that follows the "Moses model." In the Moses model, pastors have unquestioned authority and are not accountable to the parishioners, any other pastors, or overseeing organizations. Because the pastor is only accountable to god, the members cannot question him.

Dr. Lalich observed that the sermons at Calvary Chapel are filled with hateful rhetoric – homophobia, disdain of science, and hatred of public schools. The organization is based on fear – fear of the outside world and its risks – breeding paranoia, anxiety, and separation from the outside world. It also requires a great deal of time commitment from members.

The court finds that Dr. Lalich's conclusions were reinforced by the testimony from Calvary Chapel's pastor. Pastor Travis Carey presented as charismatic. He spoke fast, passionately, at length, and authoritatively. He had answers for all the questions posed to him and answered those questions in manner that suggested that there could be no other truth than the message he was delivering.

¹ Dr. Lalich avoids using the word "cult," as the term's colloquial meaning does not always accurately identify the nature of the organization. In this case, however, she is of the opinion that Calvary Chapel in Portland is a prime example of a "closed social system," and is a "cultic organization."

² There is a difference between identifying inconsistencies or admissions made by the expert during her testimony and making the reliability and admissibility arguments that Ms. Bickford has made. Ms. Bickford argues that Dr. Lalich is a sociologist, not a psychiatrist, and therefore is not qualified to offer opinions regarding harm to Ava. She further argues that her opinions regarding harm lack scientific reliability. These are arguments that could have been presented to the court prior to trial.

In his testimony, Mr. Carey⁷ explained that Calvary Chapel is a non-denominational fellowship that does not answer to an organizational body. Each church is autonomist, reporting only to their bylaws and god. He preaches that the word of god supersedes the law of the land and of this court. He has further counseled Ms. Bickford that she is doing the "right thing" by bringing Ava to services over Mr. Bradeen's objection.

Dr. Lalich testified that the potential that Ava will be harmed by the messages she is receiving is "evident." Between the ages of 7 and 11, youth are typically developing self-confidence and a sense of self. If events occur that instill a sense of being inferior and doubt during these years, that will affect the individual into adulthood. Between the ages of 12 and 18, youth are typically developing their own identity. This cannot happen, according to Dr. Lalich, in a closed social system that teaches that there is only one "right" way.

Dr. Lalich also reviewed screenshots of Ava's home study workbook pages. Ava has written "this is scary because of demons," and is reading material about sexual impropriety and adultery. According to Dr. Lalich, this messaging is confusing and troubling to a typical youth of Ava's age.

Further, Dr. Lalich does not believe that Ava's participation in Calvary Chapel is entirely voluntary. Ava bears witness to her mother's unfailing devotion to the teachings of the organization. Ms. Bickford not only models her own faith - she imposes pressure on Ava to comply and conform to being a good church member. Dr. Lalich testified that it would be a rare child who would object to participating in the organization because children of Ava's age typically want to gain the approval and love of their parents. Children who are 11 years old are typically still pliable and impressionable. They are not at an age where they are able to rebel. It would be very unusual for a child of Ava's age to complain or push back. In addition, according to Dr. Lalich, Ava has already internalized much of the fear of this system, which is motivational. In conclusion, Dr. Lalich holds the opinion that the "fear mongering," paranoia, and anxiety taught by Calvary Chapel has, more likely than not, already had an impact on Ava's childhood development.

III. Medical Decision-Making

Ms. Bickford's views on health care have changed, as well. Ava has seasonal allergies and asthma, for which she has been prescribed an inhaler. She also has a nebulizer for use in the winter. Ava used to be up to date on all recommended vaccinations. Recently, however, Ms. Bickford has opposed vaccinations, including the flu and COVID vaccines. Ms. Bickford has also refused to respond to Mr. Bradeen's communication regarding the HPV vaccination. Mr. Bradeen's motivation for

vaccinating Ava is based upon Ava's physician's recommendation that she receive the flu and COVID vaccines. At this point, the parties are unable to discuss, much less reach agreement, on vaccinations.

Ms. Bickford has also opposed Ava's receipt of antibiotics. On one occasion, Ava was prescribed antibiotics after being diagnosed with pneumonia. Ms. Bickford refused to allow Ava to take the prescribed antibiotic based on anecdotal evidence of a friend's experience. Ultimately, Ava's physician prescribed an antibiotic that Ms. Bickford allowed.

The court finds that the parties have been unable to co-parent regarding medical decision making. The court further finds that Mr. Bradeen's decision making with respect to medical decisions is more rational and tied more closely to Ava's best interests. Mr. Bradeen bases his decisions on Ava's physician's recommendations as well as information from the Centers for Disease Control ("CDC"). In contrast, Ms. Bickford's decision making is more emotionally based. She bases her decisions on her personal experience, stories from friends, and a website that collects reports of adverse events. Ms. Bickford has declined to even discuss the COVID vaccine with Ava's pediatrician, instead asking the pediatrician not to raise the issue because it might cause conflict.

IV. Harm to Ava

Whenever Ava raises the topic of religion, Mr. Bradeen has intentionally tried to be vague about his beliefs in general and his concerns about Calvary Chapel. When Ava talks about the rapture, Mr. Bradeen explains that it is not what he believes, and that different people have different ideas. Although troubled by Ava's stress and anxiety, Mr. Bradeen has not suggested that Ava see a counselor to address her anxieties, which the court finds consistent with Mr. Bradeen's general approach of not suggesting to Ava that there is something that she or her mother are doing that is "wrong." Even when the possibility of Ava having received some very direct messaging about this case surfaced (discussed below), Mr. Bradeen did not discuss the messaging with Ava because he did not want to suggest to Ava that her mother or the pastor of her church were saying anything inappropriate. The court finds that Mr. Bradeen has taken a measured approach to this conflict and has acted in a manner designed to protect Ava from additional anxiety, even in the face of his own internal conflict about the messaging that Ava is receiving.

In contrast, the court finds that Ms. Bickford's beliefs about Calvary Chapel's teachings have eclipsed her ability to make decisions that are in Ava's best interests. Ms. Bickford does not see Ava's anxiety. She believes that Ava should not be experiencing any anxiety because the practice of prayer should alleviate all of Ava's anxiety. Moreover, given Mr. Carey's admonition against counseling and mental health

professionals – calling them a “hoax” – the court finds it unlikely that Ms. Bickford would support Ava seeing a counselor to address the anxiety that she is experiencing.

Further, Ms. Bickford has testified that Ava’s relationship with god is more important than *anything* else, including school or any other activities in which she might express interest, *and is even more important than her relationship with Mr. Bradeen*. For this reason, Ms. Bickford testified that she is not sure that she will follow this court’s orders, and certainly will not do so if she concludes that this court’s order conflicts with what god intends and wants.

The depth of Ms. Bickford’s conviction, and the impact that it has on her ability to protect Ava from psychological harm, was born out on the evening of Wednesday, August 28, 2024. Following the first day of trial, Ava was scheduled to transfer from Mr. Bradeen’s care to Ms. Bickford’s. Mr. Bradeen observed Ava’s anxiety about the timing of the transfer, as she expressed concern about being late for church services that evening. During the services that evening, Mr. Carey led the congregation in a prayer regarding the “custody battle” between Mr. Bradeen and Ms. Bickford. Ms. Bickford knew that Mr. Carey intended to discuss the litigation through prayer and encouraged his actions. Ms. Bickford also let Ava listen to Mr. Carey’s words, never removing her from the sanctuary. When questioned about this choice during the November 27 hearing, Ms. Bickford explained that she thought it was appropriate for Ava to be present for the prayer.

The prayer involved several minutes of Mr. Carey’s reflections on the “custody battle,” and what it meant for Ms. Bickford and Ava, referring to them by name. Contrary to Ms. Bickford’s belief, it was objectively inappropriate for Ava to hear Mr. Carey’s comments. To avoid taking any of Mr. Carey’s statements out of context, the entire prayer is repeated, as follows:

Hey good evening, brothers and sisters. Let’s, um, let’s begin by prayer. There is a dear sister in the church. You guys know Emily Bickford and for months in preparation for what really is a, is a, I guess a custody battle. There’s been 50/50 with dear Ava. Eleven-year-old Ava who’s been with the church family. She’s had teen camp with the teenagers this past weekend and Ava’s grown in the lord. And’s Emily’s made a priority that when she has the custody over her daughter that they’re here. And they’re here all the time. But Ava’s father has had a difficult time with that. We’ve been praying for Matt and his salvation for a long time and it’s kind of had this culmination point which has been, actually today was the first of what will be a, a two-day trial, and so half of the day today from one o’clock on, a handful of the ladies, [names redacted], they got to sit in the, in the court as, as you know, witnesses on behalf of the church, on behalf of Emily and Ava. But it’s a unique situation because you guys probably are aware that justice is so much now in the hands of a judge and no matter what area of

civilization, culture, politics, you're looking at, that can go one way or the other depending on who appointed that judge. So, the, the what would seem to be an obvious constitutional, both federally and as a state level, you, you look at article one, section three of the Maine State Constitution that every individual has a holy and divine right and responsibility to worship god according to their own conscious - but things have changed in our culture and so really the, the issue is - and it's going to be put in the hands of a judge - is can Emily take her daughter to a Bible teaching church? And sadly, again, you wouldn't think that would be an issue. And one of the things that has happened is the - Matt's side, Ava's father - has hired what they call an expert witness and this expert witness out of California was hired for a large sum of money to find any dirt they can on Calvary Chapel, on Pastor [name redacted] and on, on, on myself and on, on Ava's faith and Emily's faith. And you read that twenty-page expose and at times it is almost laughable because of they're how, just you know, reaching and striving for anything. But it's not laughable because this is going to be brought before a judge. And depending on where this judge stands with god and his word will depend on how the decision goes forth. So I'm bringing this up to you all because today was day one. And you know, you know, Emily's got great confidence in a big and great god, but Friday is day two and I, I'll actually have the opportunity to, I guess the saying is "take the stand," and, and answer questions including from a lawyer who has read this twenty-page expose from the expert witness. So, this is a unique situation we are living in. You wouldn't think this is the, the nation that we, that you know, founded by godly men and women. Uh, it's hard to take god's word out of almost every area of our government. I mean, courthouses have scripture written on them. But this isn't really an attack on Emily, or Ava, or Calvary Chapel. This is really an attack on god's word and so our prayer would be that the judge would have a little bit of a, I don't know, conscious conflict and realize this - that fundamental we are, if fundamental means that we stick to the scripture, and fundamental we are if we believe that god is the head of the church. So, I'm hoping that justice will prevail, but I'm asking you guys, in case this is the first time you're hearing of it - I know many of you have not - you, you have been alongside Emily and Ava through this. I really ask you guys to be in prayer, especially Friday. Am I, am I correct in saying 9 a.m.? It kinds of kicks off, it could go all day. [audience member inaudible] Okay, so most of the day on Friday. Would you guys please be in prayer? One, we obviously pray for Miss Emily. That god would keep her in perfect peace. You can imagine all the emotion, all the derogatory things, all the, all the accusations. Certainly for, for Ava. We pray for her. You know, I was talking to Emily on the phone earlier today. We were texting back and forth and you think about - we, we talk often about how the church as a whole has only

grown through persecution. You look through church history and as the enemy seeks to, you know, crush and, and quench, and strangle the church, the church grows through it. That's always been the case. Individually, that's true also. It's hard to imagine that when you're 11-years-old, 11-years-old and you, you're dealing with a level of persecution that young Ava is dealing with. So, we pray that god would use that in her life and, and would continue to strengthen her faith. But would you, church family, join me now? Let's pray that god would have his hand on this family and that justice would prevail. Biblical justice would prevail. Would you guys pray with me? Lord, we lift this entire hearing up to you and lord I, I know Emily's heart has been that she would gladly go through every bit of the stress and anxiety if it meant the salvation of Matt or some of the lawyers involved, or lord anyone, anyone in the hearing of this hearing. Lord, I pray that. We, we pray would you use this for your good, that a soul might be saved. Lord, we pray for Emily, that her mind and her heart would, would be fixed on you. Lord, by the holy spirit in her and upon her that lord, she would have great courage as she has today and will continue Friday. Give her the words to speak. Lord, I pray for Ava. Thank you for her. It's undeniable to all of us looking on, lord, her faith is real as real can be. Lord, she believes in the living god and so thank you for how you have done that in her life. I pray as the enemy seeks to destroy and dismantle, that lord you would work all things together for good, and what the enemy means for evil, lord, you would actually bring to good. And bring to nothing the plans and the snares and the tricks of the enemy. I pray lord as I have an opportunity to testify on behalf of the ministry here and on behalf of the Bickford family. What I've seen Emily and Ava accomplish, lord, as they have made this a priority to be in the fellowship of believers and to be under the authority of god's word. I pray you'd give me clarity by the holy spirit. Please, lord, would justice prevail? Lord, we trust you. Whatever the outcome might be, lord, we trust you and we pray, lord, that your people bring a holy remembrance to all of us on Friday. That we'd be reminded to pray for such a family, such a cause. And we ask these things in Jesus name, amen.

In this statement, Mr. Carey does several things. He characterizes the disagreement between Ms. Bickford and Mr. Bradeen as a "battle." This is of concern to the court because it suggests to Ava that there is a "right" or "good" side, and a "wrong" or "evil" side, just as there are "good" and "evil" sides in the battles about which he has sermonized.

Mr. Carey then defines the "good" and "evil" sides, placing Ms. Bickford squarely on the side of "good" and Mr. Bradeen on the side of "evil." The risk of psychological harm to Ava from hearing her church leader characterize her father's actions as bad, or evil, is apparent. In the context of Calvary Chapel's prior messaging, which has been

accepted without reservation by Ms. Bickford, the risk to Ava from hearing the messaging delivered on August 28 is that she will form the belief that her father is attempting to block her from salvation and condemn her to eternal suffering.

Mr. Carey reinforces this fear by likening Mr. Bradeen to the “enemy” who seeks to “crush,” “quench,” and “strangle” the church and Ava’s faith. He refers to Mr. Bradeen’s actions as the “snares and tricks of the enemy.” Finally, Mr. Carey makes direct reference to his belief that Mr. Bradeen is persecuting Ava. This vivid imagery, especially considering the images of demons in Ava’s workbooks, evokes visions of violence perpetrated by Ava’s father. Again, the risk of psychological harm to Ava is obvious.

The risk of psychological harm to a child from learning that their parents are in conflict, especially conflict relating to them, is well known. The court is influenced by the fact that Ms. Bickford knew that Mr. Carey was going to reference the litigation in front of Ava and encouraged his doing so. Even if Ms. Bickford could not anticipate the scope of Mr. Carey’s comments that were to follow, she placed Ava at risk of psychological harm by encouraging Mr. Carey to discuss the litigation in front of her.

Sadly, Mr. Carey went far beyond simply referencing the litigation. The court is further influenced by the fact that at no point did Ms. Bickford remove Ava from the congregation once it became clear that Mr. Carey was not going to offer a simple prayer. Instead, Ms. Bickford allowed Ava to receive the message that her father was the enemy and was persecuting her. The court finds that, more likely than not, Ava’s receipt of this message, delivered with the blessing of her mother, was psychologically detrimental.

Discussion

In the context of a motion to modify a divorce judgment or parental rights and responsibilities order, the court must engage in a two-fold inquiry: “First, whether since the prior order there has occurred a change in circumstances sufficiently substantial in its effect upon the [child's] best interests to justify a modification; and second, if so, how should the custody arrangement be modified in furtherance of the [child's] best interests.” *Smith v. Padolko*, 2008 ME 56, ¶ 11, 955 A.2d 740. The court finds Mr. Bradeen has met his burden of demonstrating a substantial change in circumstances.

I. Medical Decision Making

In this case, the court is tasked with determining whether the parties should continue to share parental rights and responsibilities with respect to medical decision making, as well as decision making regarding religious upbringing. As to the first issue, there is no evidence that Ms. Bickford’s religious beliefs or practices have played a role in her decision making. Accordingly, the court will determine the appropriateness of

allocating decision making on this issue by reference to the best interest factors set forth in 19-A M.R.S. § 1653(3), only.

Section 1653(3) requires the court to “consider as primary the safety and well-being of the child.” Ava has asthma and requires a nebulizer and an inhaler. Mr. Bradeen has demonstrated that his medical decision making is grounded in Ava’s physician’s recommendations, as well as guidance from the CDC. The court finds Mr. Bradeen’s approach to medical decision making to be reasonable, objective, and focused on Ava’s safety and wellbeing.

The court also finds that Ms. Bickford truly believes that her approach to medical decision making is grounded in Ava’s safety and wellbeing. There is nothing to suggest that Ms. Bickford intends to harm Ava or is intentionally trying to place her at risk. Nonetheless, Ms. Bickford has not engaged Ava’s physician in discussions about Ava’s safety and wellbeing, at least not with respect to the COVID vaccine, and she has relied on anecdotal evidence of harm to guide her decision making. The court finds that this practice of decision making is not reasonable or objective and that it places Ava’s safety and wellbeing at risk. *See Seymour v. Seymour*, 2021 ME 60, ¶ 28, 263 A.3d 1079 (“[A] parent’s refusal to follow medical advice on one issue could factor into whether it is in the best interests of the children to allocate overall medical decision-making to that parent.”).

Further, the court finds that the parties have been unable to co-parent on medical decision making, at least with respect to vaccines and antibiotics. *See* 19-A M.R.S. § 1653(3)(I), (J). The parties have completed I-Cope, without successfully improving their communication on this subject. Given the known need to make medical decisions for Ava (i.e., the upcoming HPV vaccine), as well as the reasonably certain need to make urgent decisions for acute health care needs in the context of her known diagnosis of asthma, the court finds that Ava’s safety and wellbeing will be better protected by allocating final medical decision making to one parent. *See* 19-A M.R.S. § 1653(3)(K), (N). Having found that Mr. Bradeen has demonstrated a capacity and intention to make decisions in a more reasonable, objective manner, focused on Ava’s safety and wellbeing, the court awards final medical decision making to Mr. Bradeen.

II. Religious Upbringing Decision Making

Deciding whether to allocate decisions regarding religious upbringing to one parent or another requires the court to engage in an analysis different from a plain application of 19-A M.R.S. § 1653(3). This is because it has long been established that the Due Process Clause of the Fourteenth Amendment to the United States Constitution refers to liberty beyond “mere[] freedom from bodily restraint,” and includes “the right of the individual to . . . bring up children.” *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *see*

also *Pierce v. Society of the Sisters of the Holy Names of Jesus & Mary*, 268 U.S. 510, 534-35 (1925). Further, article I, section 3 of Maine's Constitution, otherwise known as the religious freedom clause, guarantees the right to religious liberty, "which along with other first amendment guarantees occupies a 'preferred position' in the constitution." *Osier v. Osier*, 410 A.2d 1027, 1029 (Me. 1980) (quoting *Murdock v. Pennsylvania*, 319 U.S. 105, 115 (1943)).

In family matter cases, the Law Court has cautioned trial courts to avoid delving into "a constitutionally sensitive area", when possible, directing trial courts to "make a preliminary determination of the child's best interest without giving consideration to either parent's religious practices, in order to ascertain which of them is the preferred custodial parent."³ *Osier*, 410 A.2d at 1029. That approach, however, does not squarely meet the needs of this case. In *Osier*, the trial court granted custody of the child to the father, with visitation rights to the mother, after concluding that the mother's religious beliefs regarding blood transfusions endangered the wellbeing of the child. *Id.* However, neither the trial court's order nor the record contained facts suggesting that the child's risk of needing blood transfusions was any greater than that of the general population. *Id.* Further, no evidence had been presented regarding what options, short of depriving the mother of custody, were available to minimize the risk of harm in the case of a needed transfusion. *Id.* at 1031, n.1. And, of particular importance to the Law Court, it did not appear from the trial court's opinion that other factors, besides those that touched upon religion, were considered when determining the appropriate custodial parent. *Id.* at 1032. Accordingly, the Law Court vacated the trial court's decision, remanding the case for a determination of which parent was "better suited to have custody," exclusive of any religious factors. *Id.* Only if that issue was resolved in favor of the mother was the trial court to consider the mother's religious beliefs. *Id.*

Physical custody and rights of visitation, however, are not at issue here. The parties have reached agreement regarding physical custody and contact with Ava. And although there may not have been a distinction in Maine in 1980, under the current state of the law, the allocation of physical custody is different from the exercise of custody, *see Reno v. Flores*, 507 U.S. 292, 303-04 (1993), or, to place it in Maine's terms, physical custody is different from the exercise of parental rights and responsibilities, 19-A M.R.S. § 1653(2)(D)(1).

This court concludes that the Law Court would likely apply the same principles in *Osier* to the allocation of parental rights and responsibilities and would not restrict the principles set forth in *Osier* to cases involving physical residency and rights of visitation. After all, the trial court's decision in *Osier* placed some focus on medical decision making, which is an exercise of parental rights and responsibilities. Here, however, it is difficult

³ *Osier* was decided prior to the enactment of 19-A M.R.S. § 1653.

to divorce a “constitutionally sensitive” issue from the parties’ request for allocated rights and responsibilities with respect to Ava’s religious upbringing. It would seem, in this situation, that given the obvious implications regarding religion, the court must apply strict scrutiny at the outset and determine whether the requested allocation is “narrowly tailored” to a “compelling governmental interest.” See *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (quoting *Reno*, 507 U.S. at 302); *Kingston v. Kingston*, 532 P.3d 958, 972-73 (Utah 2022); *Osier*, 410 A.2d at 1030-31 (describing what is, essentially, the application of a strict scrutiny standard if a court must delve into “a constitutionally sensitive area”).

A. *Compelling State Interest*

State interests are compelling only in circumstances involving the avoidance of harm that is substantial. See *Osier*, 410 A.2d at 1031 (requiring “an immediate and substantial threat to the child’s well-being”); *Kingston*, 532 P.3d at 973; *Zummo v. Zummo*, 574 A.2d 1130, 1140-41 (Pa. 1990) (requiring the existence of a “substantial threat of physical or mental harm to the child”); *In re Marriage of Murga*, 103 Cal. App. 3d 498, 163 Cal. Rptr. 79, 82 (Cal. Ct. App. 1980) (requiring a “clear, affirmative showing that these religious activities will be harmful to the child”).

In determining whether Mr. Bradeen has met his burden of proving a compelling state interest, this court finds the Utah Supreme Court’s decision in *Kingston v. Kingston*, 532 P.3d 958 (Utah 2022) instructive. In *Kingston*, Ryan Kingston and Jessica Kingston were members of the Order, a polygamous religious community. Jessica Kingston left the Order prior to the parties’ divorce, but Ryan Kingston remained a member. After a multi-day trial, the trial court granted sole legal custody of the parties’ four children to Jessica Kingston and ordered that “[t]he children should not be encouraged to adopt the teachings of any religion or be baptized into any religion without the consent of the legal guardian.” *Id.* at 962.

In concluding that Jessica Kingston had established a compelling state interest, the court explained that the state has a “compelling interest in awarding legal custody based on the best interests of the child.” *Id.* at 973. This court agrees, noting that Maine’s best interest statute requires that the trial court consider the child’s safety as paramount, with the factors set forth in § 1653(3) relating directly to the physical, mental, and emotional wellbeing and safety of the child. The state has a compelling interest in awarding parental rights and responsibilities in accordance with the factors that it determines best keep the child safe.

The Utah Supreme Court also concluded that the state has a “compelling interest in shielding the children from psychological harm.” *Id.* at 974. Specifically, there were “two potentially substantial harms to the children posed by Ryan’s religious beliefs: (1)

grooming of the children for early marriage; and (2) exposure to Order teachings that ostracize outsiders and demonize those who have left the group, including Jessica.” *Id.*

In this case, both compelling state interests exist. The court concludes that there is a compelling state interest in protecting Ava from immediate and substantial psychological harm and, as such, the state has a compelling interest in allocating decision making in accordance with Ava’s best interests.

i. *Compelling Interest – Avoiding Psychological Harm*

Based on the court’s observations of Mr. Carey in court and on the video admitted in evidence on November 27, the court concludes that the tenor and content of Mr. Carey’s messaging on August 28 was not a one-time occurrence. Instead, the court finds it reasonable to conclude that Mr. Carey is consistently delivering vivid images of violence, eternal suffering at the hands of the “enemy,” and characterizations of those who challenge the church’s beliefs – including Mr. Bradeen – as the “enemy.” Although it is reasonable to conclude that this messaging *could* create a psychological risk of harm to Ava, in this case, risk has turned into reality as evidenced by Ava’s objective manifestations of anxiety.

ii. *Compelling Interest – Award Aligned with Best Interests*

In determining a child’s best interests, the court is obligated to consider the factors set forth in 19-A M.R.S. § 1653(3), placing the child’s safety and wellbeing at the forefront. After applying those factors, specifically factors A, B, F, K, N, and S, the court concludes that it is in Ava’s best interests if Mr. Bradeen is allocated the right and responsibility to make decisions regarding Ava’s religious upbringing.

Ava is about to turn 12. (Factor A.) The court finds Dr. Lalich’s testimony credible on the issue of childhood and that age 12 marks the beginning of meaningful identity development. The court is further aware that as children journey through middle school and into high school, they encounter life situations where the care, love, and guidance of both parents, and their different perspectives, is of particular importance. The court finds that it is in Ava’s best interest to continue to enjoy a strong, loving relationship with both parents as she moves into this stage of her childhood.

Ava has enjoyed a strong, loving relationship with both of her parents. (Factor B.) Ms. Bickford’s choices, however, have endangered Ava’s relationship with her father. The court concludes that Ms. Bickford is motivated by one objective and that is the promise of salvation that Calvary Chapel has offered. (Factor F.) As she testified, this objective is more important than anything, including Ava’s relationship with her father.

In the past few years, only one parent – Ms. Bickford – has exercised control over Ava’s religious upbringing. (Factor K.) The court finds that Ms. Bickford’s unquestioning

loyalty to the church and abdication of independent decision making has placed Ava in situations where she receives messages that pose an immediate risk of significant psychological harm. Further, the court finds that due to Ms. Bickford's level of commitment to Calvary Chapel, there is little to no room for the parties to co-parent on religious decision making.

The messages that have been presented to Ava suggest that her father is going to burn and suffer for eternity, that he is persecuting her, that he seeks to "dismantle" her faith (which she has been taught to believe is the only way she will be saved from eternal suffering), and that he is the enemy whose "tricks" and "snares" must be avoided. This is not psychologically safe construct for Ava. (Factor N.) To be clear, the court is not taking a position on any religious principle. This is not a substantive comparison between the religious values held by Mr. Bradeen and Ms. Bickford. Instead, the court is focused on (1) the effect of the messaging, which - like the Order in *Kingston* - risks demonizing a child's parent and psychologically damaging the child, and (2) the likelihood that Ms. Bickford will co-parent with Mr. Bradeen to avoid that risk.

Finally, the court considered factor S - whether allocation of some or all parental rights and responsibilities would best support the child's safety and wellbeing. The court is mindful of the psychological effects that could befall Ava if Mr. Bradeen were to abruptly prohibit her from attending Calvary Chapel, studying in her workbook, or discussing the church's teachings with Ms. Bickford. Based on the court's observations, Ms. Bickford's beliefs are so absolute and so fundamentally connected to her perception of survival that the court is concerned about the conflict that will arise if Ava is not aligned with her mother. And, at this point, the court has no way of knowing how closely Ava holds those beliefs. The court finds Dr. Lalich's opinion regarding the voluntariness of Ava's participation in Calvary Chapel credible and concludes that Ava's participation cannot be defined as strictly voluntary. Nonetheless, given the length of time she and her mother have been attending the church, the amount of time that they devote to the church, the vulnerability to influence associated with Ava's age, and the intensity of the church's messaging, it would be reasonable to conclude that Ava genuinely believes that her eternal survival is conditioned on her participation in the church. Careful thought and attention must be given before taking action that separates Ava from this belief system.

As between the two parents, the court concludes that Mr. Bradeen is in a better position to weigh the psychological effects of participation in the church, and the extent of Ava's participation, objectively and with her safety and wellbeing in mind. Because the parties cannot effectively co-parent on this issue, one of the parties must be vested with the right and responsibility to make decisions. Ms. Bickford has handed over that right and responsibility to the church and is no longer exercising independent decision

making regarding the messaging that her daughter receives. Accordingly, factor S also weighs in favor of allocating decision making to Mr. Bradeen.

B. *Narrowly Tailored Restriction*

The compelling state interests identified by the court are (1) avoiding psychological harm to Ava and (2) awarding the right and responsibility to make decisions concerning religious upbringing in a manner that is aligned with Ava's best interests. In *Kingston*, the Utah Supreme Court concluded that prohibiting Mr. Kingston from "encourag[ing] [the children] to adopt the teachings of any religion" was not narrowly tailored to the identified potential harms presented by the Order. *Kingston*, 532 P.3d at 974-75. The prohibition would, for example, prevent Mr. Kingston from "teaching the children the Lord's Prayer or encouraging them to adopt the teachings of Islam," neither of which had been demonstrated to pose any potential harm. *Id.* This court agrees that the same risk of over-restriction exists here, where there has been no showing of harm to Ava associated with a belief system that is rooted in the Bible. Instead, the harm is associated with Ms. Bickford's inability to co-parent with Mr. Bradeen on the topic matter of religion; the handing over of her right and responsibility to make decisions that are in Ava's best interests to Calvary Chapel; and the specific messaging that has been delivered by Calvary Chapel, which divides Ava from her father and characterizes him as the "enemy" who poses a threat to her eternal salvation, thereby harming Ava herself.

Accordingly, the court concludes that a narrowly tailored restriction of Ms. Bickford's rights is as follows: Mr. Bradeen is allocated the right and responsibility to make decisions regarding whether Ava attends any services, gatherings, or events associated with Calvary Chapel; whether and what material, literature, video, or other messaging associated with, or created or published by, Calvary Chapel she reviews; and whether she associates or communicates with any member of Calvary Chapel other than Ms. Bickford. As to Ava's participation in any other church or religious organization, or Ava's exposure to the teachings of any religious philosophy or of the Bible in general – the parties shall continue to share parental rights and responsibilities and are required to jointly research the church, organization, or teachings and discuss whether Ava's participation and exposure is in her best interests. However, given Ms. Bickford's history of relinquishing her independent decision making to Calvary Chapel, Mr. Bradeen is awarded the right to make final decisions regarding Ava's participation in other churches and religious organizations in the event of a dispute between the parties. Finally, in their communications with Ava on topic matters of religion or faith-based beliefs, the parties may not disparage the other party in any way, nor shall either party make any disparaging comment or judgment regarding the other party's beliefs, instead encouraging Ava to discuss each party's beliefs directly with that party.

WHEREFORE, it is ORDERED as follows:

1. Ms. Bickford's motions to enforce and to modify are DENIED. Mr. Bradeen's motions to enforce and to modify are GRANTED, in part.

2. The parties' stipulated amended judgment, submitted to the court on November 1, 2024, is adopted and incorporated herein.

3. Both parties retain the right and responsibility to obtain care for Ava in emergency situations and to make decisions regarding the administration of over-the-counter medications or first aid treatment. With respect to decisions significantly affecting Ava's medical health care, including but not limited to vaccinations and the administration of any prescribed medication, Mr. Bradeen must first consult Ms. Bickford and consider her thoughts and opinions, but is vested with final decision-making rights and responsibilities.

4. Parental rights and responsibilities regarding religious upbringing are allocated as set forth in the paragraph immediately preceding the "WHEREFORE" section, above.

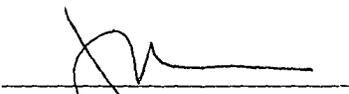
5. Further, having found that it is unlikely that Ms. Bickford will consent to engaging a mental health professional to help Ava process the conflict between her parents' belief systems or to provide advice regarding ameliorating the psychological harm identified above, the court also awards Mr. Bradeen final decision making regarding whether to engage a mental health professional to provide services to Ava to address the issues identified in this litigation.

6. All other relief requested is denied.

7. To the extent not modified by the terms of this order, the terms of the court's orders dated September 16, 2013, are in full force and effect.

The Clerk is directed to incorporate this order by reference on the docket pursuant to M.R. Civ. P. 79(a).

Dated: December 13, 2024


Hon. Jennifer Nofsinger
Judge, Maine District Court

Entered on the Docket: 12/16/24