MR. GRIMES: -- put on the record.

THE COURT: Will you cover that, Mr. Ghibaudo, please?

MR. GHIBAUDO: Yes.

THE COURT: Okay.

MR. GHIBAUDO: We discussed that. I discussed it with my client. She does waive attorney-client privilege.

THE COURT: Satisfied, Mr. Grimes?

MR. GRIMES: Absolutely.

THE COURT: Okay. And D is actually going to be --

MR. GHIBAUDO: Bates stamp 174.

THE COURT: -- which is actually 4, not D.

MR. GHIBAUDO: 4.

THE COURT: It's going to be 4-D.

MR. GHIBAUDO: 4.

THE COURT: Just so we can track it.

BY MR. GHIBAUDO:

Q Are you there, Ben?

A Yes, I see it.

Q All right. So I'll refer you back to March -- on or around March 15th. Do you recall some issue arising that you had to address with Luba and the opposing party?

A Yes.

Q Okay. Can you explain to the Court what that was? What happened?

A Well, essentially, they were -- Enrique was going to take the

child, whose name escapes me now, but she's about eight or nine --

Q [redacted]

A -- something like that.

Q [redacted]

A [redacted] To Mexico, and that Luba was asking for some assurances that the child was going to be safe because she was worried about it. And then we had a conference call with the court, with Judge Almase, on apparently March 15th. I have an independent recollection of it happening, but these emails in Exhibit 4-D kind of summarize -- summarize my memo about what happened.

Q Okay. And if you'd just describe it to the Court. What happened? What was the agreement? What did you guys agree to? Was that agreement fulfilled? Can you just explain what happened?

A Yeah. Well, it seemed like the judge was just clarifying because this had about a 30-page parenting plan. And part of it dealt with travel outside the country, out of the United States. And so Luba was asking about this CBX -- which I dealt with, I am familiar with it now, not at the time -- where you park on the American side of Tijuana. And then they have a tunnel that you don't go into, you don't walk into Tijuana, you walk through this tunnel to the airport in Tijuana. And so It's just a more secure thing, which is what Luba was worried about.

And then also traveled to -- in this -- I don't know if it was Jalisco or Nuevo Leon. That there was -- it's a high-crime area. And so she and I did some research on -- I don't know if it was the State Department about the -- whether there were travel advisories to go there because -- and the

reason this ties in together is that it's cheaper to fly from Tijuana to whatever big city it is in Nuevo Leon, and then to fly from the United States to Nuevo Leon. So Enrique's plan was to go into Tijuana and then take the plane from Tijuana to the -- whatever airport it is in Nuevo Leon.

Q Okay. So her concern was, fair to say, the basis was that she was fearful of the crime in Tijuana?

A That was part of it.

Q And what did she base that on? Was that based on acts or occurrences? Things that had occurred previous to this event?

A We filed a motion. I'd have to review it. But I think there was some advisory, like some college student was kidnapped or something. Something happened and there was an advisory because this is spring break time.

Q Okay. So let me turn your attention to Bates stamp 178. And do you recall this being a basis for Luba's concerns?

A Oh, absolutely. Because this was an ongoing -- this is talking about Enrique's psychological report which was ordered previously. And I quote from it in here about what a -- it's kind of a risky place, and the family situation was also risky.

And the other problem, one thing we're talking about is this TalkingParents because that was one of the issues is -- I think it's not addressed in the parenting plan about the contact -- and we were saying, well, she just wanted to talk to her daughter every night. And so part of it -- if you look at let's see 174, part of it was that they would have communication -- this is after the conference call with the court -- every

night, at 8:00, for five to 10 minutes.

Q So let me stop you right there.

A Okay.

Q So that -- what you're looking at now, Bates stamp 174, the summary of the judge's ruling, this was you sending this email to Mr. Grimes, right?

A Yes. Uh-huh.

Q And these are the terms of, essentially, what the agreement was as it relates to this visitation, right?

A Yeah. It was clarifying the existing order.

Q Can you read that into the record --

A Well --

Q -- so the Court -- what you said?

A Of course. So this was at 8:44. So I think the conference call was probably at 8:00 or 8:30. And I just summarized, like, a little confirming letter we used to call it, but now email, that they have communication with the -- Luba has communication with the -- with [redacted] The CBX tickets be provided, both going and coming, because the agreement was -- or the Court's ruling, as I interpreted was that the CBX tickets were part of the itinerary. And that was in the order that the itinerary was supposed to be provided some number of days prior to the travel. And then no -- just reading -- continue to read through these summary -- no travel outside of Nuevo Leon, which is the state in Mexico where he was going, and that there was going to be communication every night at 8:00 for five to 10 minutes, and the non-custodial parent

initiates. I think that would be Luba, because the child was with -- would be with Enrique. And then I also said -- I guess this wasn't addressed -- using TalkingParents video app for the communication for the calls.

Q And to your knowledge, did Mr. Grimes indicate that that was -- that was the agreement?

A Yeah.

Q And is that reflected -- turn your attention to the next page, 175.

A Yeah. And I think I called him because it says, I'll call you in five.

Q Talk in five. And then at the bottom of 175, this is from Mel Grimes to you, right?

A Right. At 8:54.

Q And --

A Now, hold on. This was 10 minutes later.

Q Right. So this was --

A And he --

Q -- in response to that initial email where you laid out the terms, right?

A Yeah. Uh-huh.

Q Okay. And does that indicate that he was accepting those terms?

A Well, he was talking about the TalkingParents first. And the second line is the CBX tickets. He's going to purchase the CBX tickets and then provide copies because that was part of the itinerary.

Q Okay. To your knowledge, did that ever happen?

A No. And to my knowledge, it did not happen.

Q Okay. Given that it didn't happen, what was your, say, recommendation? Or what did you tell Luba about what her obligation was, given that that did not happen?

A Well, she had to choice to make because there was an order that had been clarified at this conference, and Enrique had not complied with it. So it was up to her.

Q So fair to say that based on what you told her, she would have been within her -- it would have been fair for her to say, "I'm not going to allow this to happen," given what your advice to her was?

A It was totally up to her.

Q Okay.

MR. GHIBAUDO: All right. I have nothing further.

THE COURT: Mr. Grimes?

CROSS-EXAMINATION

BY MR. GRIMES:

Q Mr. Childs, you were on the phone -- on the conference call that was directed to be had at 8:30 on March 15 with you, myself, and Judge Almase, correct?

A Right.

Q That was an off-the-record conversation?

A Unfortunately, yes. And I am not doing that again.

Q On that, we can agree.

THE COURT: Agreed.

BY MR. GRIMES:

Q But, Mr. Childs, wasn't one of the things the judge said was that she was making no orders today?

A No. I don't --

Q You're --

A I don't -- I don't recall. I don't recall.

Q There was no order issued from that conversation, was there?

A No written order.

Q And pursuant to the Supreme Court rules, if it's not written, it's not an order, correct?

A I disagree with that.

Q Let's be clear. You're a licensed attorney in the state of Nevada?

A Yes.

Q And you practice family law?

A Not very much anymore, but I do.

Q In this case, you represented Luba as her attorney in a family law case --

A That's --

Q -- correct?

A -- right. Yes.

Q Okay. Do you believe that a parent has the right to violate the custodial orders of a court?

A Absolutely not.

Q Yet you directed your client to violate the orders of the court in this case, correct?

MR. GHIBAUDO: Objection. Mischaracterizes --

THE WITNESS: Absolutely not.

MR. GHIBAUDO: -- testimony.

THE COURT: Say that again, Mr. Ghibaudo.

MR. GHIBAUDO: Objection. It mischaracterizes his testimony.

THE COURT: I'll allow it as cross. You can answer, if you choose.

THE WITNESS: No.

BY MR. GRIMES:

Q No, you didn't inform her she could violate the order?

A Emphatically, no.

Q Your testimony on direct was that you told her it was up to her?

A That's right.

Q You don't think that that could be received as, you're okay violating an order?

A Anything's possible, but I had a very long and many minute, maybe not hours, with Luba about this, leading up to it. Because there was a motion prior -- there was a motion that resulted in this conference call. So we prepared.

Q Well, you're correct, that was a motion. In fact, didn't I file a -- a motion for the production of the passport?

A I have -- I don't recall --

Q Isn't --

A -- but --

Q -- that what led to it?

A No.

Q Okay. Mr. Childs, did you advise your client to Google map every Airbnb that my client stays at in Mexico?

A No. I think she did that on her own, as I recall. But no, I didn't --

Q And then --

A -- advise her --

Q -- she raised issues with you and you would send off letters?

A Yeah. Probably.

Q Okay. So I want to be clear here. Did you --

A Okay.

Q Is it your testimony that you did not tell Luba she could violate the order of the court?

A That's absolutely my testimony.

Q You did not tell her that?

A Hold on. I want to be clear on the question. That she could? Anything's possible. So I would say no, I -- of course, she can violate whatever order, if she wants to do -- violate. That's possible.

Q Did you advise --

A I did not advise her to.

Q Perfect. Thank you.

A Yeah.

Q So if she violated the order of the court, that was her decision, correct?

A Absolutely.

Q All right.

MR. GRIMES: I have no further questions.

THE COURT: Mr. Ghibaudo?

REDIRECT EXAMINATION

BY MR. GHIBAUDO:

Q So Mr. Grimes asked you a question, and I do want you to clarify this. Obviously, we're not asking you to testify under oath that you directed your client to violate a court order. But given the agreement that was reached, that you just read into the record, would it be fair for her or could she have come to the understanding, based on our conversations with her, that violating the order would not have gotten her in trouble based on this renewed agreement?

A Well, the problem is that the CB -- mainly the -- the CBX tickets is part of the itinerary, which is addressed directly in this parenting agreement. And so if the CBX tickets are part of the itinerary and he hasn't provided the CBX tickets -- and if you go back to -- and I'll find it in here -- I mean, on 175, Mr. Grimes says, "Enrique will purchase the CBX tickets and provide copies." And then --

Q Well, look --

A -- later on -- well, let me finish this answer.

Q Sure.

A Later on, at 9:34 on March 15, Mr. Grimes writes and says, "She can pay for the CBX tickets and be" -- "and they reimburse at the exchange, or they will provide, after they receive [redacted] So given that the CBX ticket is part of the itinerary -- first, he says he's going to -- Mr. Grimes says they're going to -- on 175, "Enrique will purchase the CBX tickets and provide copies." And then on 176, about half an hour later, he says, "she can buy the" -- "she can buy the CBX tickets," which is not her responsibility.

Q So what was your understanding if that -- if that provision was not met, what -- what is the outcome? What is the result? What would be the result of that? So in other words, this provision, it's not met, then what?

A Well, the conclusion is they haven't provided the itinerary, because the CBX tickets are part of the itinerary.

Q Well, if that doesn't happen, then would she -- would it be within her rights, in your estimation, to not do the exchange?

A Absolutely, because he hasn't provided the itinerary. Even under the -- even under the written order in the parenting plan, he has not provided the itinerary because the finding was -- or the agreement was that the CBX tickets were part of the itinerary.

Q Okay. So when you -- would it be fair to say that when you discussed this with Luba, that she could have reached the conclusion that she didn't have to do the exchange, based on this -- your view of -- of these events and what these agreements mean?

A Sure. It says right here they're -- apparently Mr. Grimes is

advising Enrique not to buy the CBX -- not to buy the CBX tickets and provide proof to Luba. And then also this problem with the video exchange, because they -- Mr. Grimes in here assured me that Enrique had enabled TalkingParents. At the bottom of page 172, "This TalkingParents video has been enabled," and then Luba tried to do a call -- and it's on 179, and I attached it in the email to Mr. Grimes saying, "Well, it hasn't been" -- "the TalkingParents has not been initiated." Which is one of the big concerns that she had about not being able to communicate with the child.

Q Well, let me about your interactions with Luba. Did you get the sense -- and how long did you represent her for? I'm sorry.

A Maybe a year and a half.

Q Okay. And you --

A I got -- got hired because of some emergency hearing that happened on like December 22nd to go down -- by the bankruptcy attorney to go with her to court, because she was super worried about that. And then it just kind of continued.

Q But you got to know her pretty well, right?

A Oh, absolutely.

Q Did you get a sense ever that it was her intent or that it was her desire that he not have a relationship with his child?

MR. GRIMES: Objection. Beyond the scope of my question. This is redirect.

MR. GHIBAUDO: This is my direct.

THE COURT: Sustained.

044

MR. GHIBAUDO: What -- what was the ruling, Your Honor?

THE COURT: Sustained.

MR. GHIBAUDO: Okay. Then I'd ask the Court to give me leeway to do a little more direct.

THE COURT: Mr. Grimes?

MR. GRIMES: By all means.

THE COURT: Mr. Ghibaudo.

MR. GHIBAUDO: All right.

BY MR. GHIBAUDO:

Q Did you ever get the sense that she was trying to deliberately undermine his custodial rights?

A Absolutely not. The whole thing is the joint custody. She's totally dedicated to having a joint custody situation with Enrique. And it just -- it's frustrated for everybody.

Q All right.

MR. GHIBAUDO: I have nothing more.

THE COURT: Mr. Grimes?

RECROSS-EXAMINATION

BY MR. GRIMES:

Q Could you open up my Exhibit 1 and turn to Exhibit A, please?

MR. GHIBAUDO: Can you give me a page?

MR. GRIMES: We're going to go to page 13 of the parenting plan.

THE COURT: [Indiscernible] 13?

045

MR. GRIMES: Yes.

THE COURT: Does it have Bates numbers -- or Bates numbers?

MR. GRIMES: Well, it's a document we normally don't admit. I just had it in there --

THE COURT: I understand, but --

MR. GRIMES: -- for convenience.

THE COURT: -- your exhibits are supposed to be based on [indiscernible].

MR. GRIMES: I know that.

THE COURT: Page 13 chronological?

MR. GRIMES: Correct.

THE COURT: Got it.

BY MR. GRIMES:

Q Are you there?

A Yep.

Q You'll see that this is the middle of a paragraph that starts the prior page. But the -- the top of there, it says, "The itinerary shall." Can you read that?

A Yeah.

Q Are you there?

A Yeah.

Q Would you read where it -- out loud where it says, "The itinerary shall?"

A "The itinerary shall set forth all flights the minor child will

take, and each night of the trip, the address where the child will be staying each night she's away from Las Vegas, and if applicable, the name of the hotel where the child will be staying and a number at which the child may be reached in the event of an emergency. If the border crossing will be by car or on foot, the parent taking the child out the country will also provide the dates of the border crossings as part of the itinerary."

Q It didn't mention CBX in there at all, does it?

A No.

Q It does not say that the CBX ticket is, in fact, part of the itinerary, does it?

A No, it does not.

Q And we took pains in drafting that to ensure that the itinerary was defined, correct?

A I have no idea.

Q Well, doesn't it appear --

A This is before my -- my time.

Q Does that appear to be boilerplate or cut-and-paste language to you?

A Yes.

Q I'd like you to go back to Exhibit 40179. Now, that is the -- the screenshot that you sent my office, correct?

A Yes.

Q And you assert that it claims that he had not enabled the video chat, correct?

047

A Right.

Q Can you actually read what it says?

A "Phone and video calls." It has a date. And it says, "5G. Search transcripts. Start an accountable call. Cannot start a video call. To use video calling, your co-parent must update their app to the newest version." And then --

Q At no point in your email did you say that, did you? Your email asserts that he was lying and had not enabled it, correct?

A Right. Uh-huh.

Q In fact, he --

A Well, hold on.

Q -- had enabled it?

A I don't use the word lie. "He has not enabled video call option on TalkingParents. See attached."

Q Fair enough. But in fact, that wasn't the case at all? He just needed to update it, correct?

A I don't know.

Q That's what it says, isn't it?

A Well --

Q Mr. Childs, isn't that --

A No. I would say --

Q -- what it says?

A I would say no, that's --

Q So when it says, "your co-parent must update their app to the newest version," it doesn't actually say that? That's your testimony

048