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FILED

JAN 13 2014



In the Supreme Court of the State of Nevada

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

MARCUS LAWRENCE FAULS

Supreme Court No. 64447

Appellant,

vs.

CRYSTAL AICHELE

Respondent.

RESPONSE TO ORDER TO SHOW CAUSE

Appellant Marcus Fauls, through counsel, respectfully submits this Response to show cause why this court has jurisdiction over this appeal, and/or why in the alternative the court should exercise its discretion and treat the appeal as a petition for extraordinary relief, and entertain further proceedings. *In re Temporary Custody of five Minor Children*, 105 Nev. 441, 777 P.2d 901 (1989). The right to parent is a constitutionally protected right, requiring a full evidentiary hearing and full due process. See *In the matter of the Parental Rights as to A.G.*, 129 Nev., Adv. Opinion 13, __ P.3d __ (February 28, 2013). An appeal is allowed from an order granting an injunction, and the effect of the Temporary and Extended Orders and Order affirming both is to enjoin the previously enjoyed right to parent and exercise of the parent child relationship. NRAP 3A(b)(3). By statute NRS 33.040(1)(2), The orders are not temporary, they exist independently of and are in addition to and not in lieu of any other available civil or criminal action. Due process is denied when there is no evidentiary hearing and no right to review by way of appeal.

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TRACIE K. LINDEMAN
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INJUNCTIVE RELIEF

NRAP 3A (b) (3) provides a basis for jurisdiction over this appeal. As set forth in the documents attached to the Docketing Statement filed December 10, 2013, the Temporary Order, Extended Order, and Order after Hearing affirming these two orders grant injunctive relief sought under chapter 33 of NRS. They warn of arrest for alleged violations. The Extended Order and Order after Hearing both also refused to dissolve the injunctive relief enjoining Marcus Fauls from exercising his constitutional right to parent his children in his home as he had done from the birth of each child until the injunctive relief was first granted ex-parte July 16, 2013.

There is no question that these orders grant injunctive relief.

The Appellant in the Docketing Statement specified NRAP 3A(b)(3) as the basis for substantive appealability, paragraph #20.

The facts to support the contention that Marcus had parental rights and exercised physical care custody and control of these children since the day of birth of each child in his home are set forth in the Application Crystal filed 07/16/13, and are summarized in Exhibit 1 attached.

The temporary order grants injunctive relief. The scope of injunctive relief is defined in NRS 33.030. Whene temporary custody is granted pursuant to NRS 33.030 (1) (d) it enjoins Marcus from exercising his previously existing parental care custody and control.

NRS 33.030 (2) empowers the court to extend the injunctive relief depriving Marcus of his constitutional right to parent.

When an injunctive order is issued by a Justice Court the order is appealable to a district court. NRS 33.030(3). An extended order may enjoin possession of firearms. NRS 33.031.

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3 The injunction may order child support enforceable by NRS 31a and NRS 125B, each of
4 which are modifiable and appealable when entered in a divorce or child support enforcement
5 proceeding. The injunctive relief may award child custody. Child custody may be modified or
6 appealed in divorce proceedings.

7
8 Finally and of most significance a temporary order or extended order exists separate of
9 and independently of any other civil action. NRS 33.040 (1) and (2); (2) It is in addition to and
10 not in lieu of any other available civil action. A temporary order may be converted into an
11 extended order effective for a year. NRS 33.080. The injunctive relief in the Extended Order is
12 final and continues for up to one year.

13 In fact and practice, the orders are not temporary just because child support and custody
14 provisions may be modified. Divorce decrees involving child support and custody are final but
15 are also subject to review modification. For example, child support modifiable based on changed
16 circumstances NRS 125B.145 (4). Child support is subject to a mandatory review every three
17 years. NRS 125B.145

18
19 FINAL ORDER

20 The order of October 16, 2013 affirming the extended order and the temporary order is a
21 final order from which there is no appeal. The court in that order refused to address the
22 constitutional rights claims raised by Mr. Fauls, holding that the scope of hearing was limited to
23 whether a Master findings and recommendations were clearly erroneous, NRCP 53(e)(2).

24
25 The temporary and extended orders exist for an entire year and enjoin a parent from
26 exercising his previously enjoined parental rights to care custody and contact to "parent his
27 child".
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3 The Injunctive Order is independent of and from any other civil action, and is in addition
4 to and not in lieu of a paternity or divorce or other civil action. NRS 33.040(2). If entered by a
5 justice court, the order is reviewable by appeal to a district court. NRS 33.030 (3).

6 To a three year old child and to the parent enjoined from contact they had enjoyed for the
7 life of the child (see Application fact summary) each day of separation of the father-child bond
8 of care, love, and affection is an eternity, and a year is a life time. There is no law that states that
9 an injunction lasting a year is by its terms "temporary" and not final. It is final for a set time, so
10 are other final orders. There is no periodic review of the extended order; it will exist for a year.

11 CONCLUSION

12
13 A person against whom an Order prohibiting Domestic violence in this case has been
14 enjoined from exercising the parental rights guaranteed not to be taken away without due process
15 and without an evidentiary hearing. Those rights were taken, and the transcripts will clearly
16 show there has been no due process, no hearing with direct testimony, witnesses and cross
17 examination. Clearly Orders pursuant to NRS 33.010 to 33.100 are injunctive and subject to
18 appeal when they alter child custody and parental rights to parent. NRAP 3A (b) (3).

19
20 The Order of October 16, 2013 affirming the injunctive relief granted by the temporary
21 and extended orders is final. The order now exists independent of any other civil proceeding that
22 may address custody. When entered by a justice court the order is appealable. A district court
23 party who has the same rights enjoined should be entitled to appeal.

24 WRIT OF MANDAMUS ALTERNATIVE


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26 However, in the event the Supreme Court finds jurisdiction lacking to support a direct
27 appeal, the Appellant requests that the appeal be treated as a petition for mandamus or other
28 extraordinary writ relief, and the court exercise its discretion and entertain the petition. The

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orders as challenged do affect the custody of children, they are independent of other civil actions, and may thus have far reaching and long term consequences for both parents and children, constitutional rights are being denied, there is a parent-child relationship that is entitled to constitutional protection. See *in the matter of the parental rights as to A.G.* 129 Nev. Adv. Op 13, (2013). This is an issue of first impression. Marcus asserts that when he appeared and custody was extended July 30, 2013, it was done without an evidentiary hearing. The Application of July 16, 2013 on its face contains no facts to support finding an act of domestic violence as defined in NRS 33.018, see Exhibit 1 summary. The court has on file herein the initial Application that resulted in the Ex-Parte custody order. The court has before it the temporary order and extended order both issued by a Master and not by signature of a judge, although a page appears later in each order without any date and with an electronic stamp signature of a judge. Appellant raised the issue whether a master has judicial authority to issue Orders when the order can deprive a person of a constitutional right to custody and parent a child and when its alleged violation subjects a person to arrest and detention. The District Court failed in its order of Oct. 16, 2013 to address the constitutional rights violations raised by Mr. Fauls.

For all these reasons, the Supreme Court should grant the appeal or in the alternative find cause to exercise its discretion to and entertain the appeal as a petition for mandamus or other extraordinary writ.

Respectfully submitted this 10th day of January, 2014


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EXHIBIT 1

DOCKETING STATEMENT RECORDS

1. CUSTODIAL FACTS from THE APPLICATION OF CRYSTAL AICHELE

The Docketing Statement filed December 10, 2013 includes as Exhibit 1 the Application of Crystal Aichele and therein she sets forth the following statement of facts of child custody and those facts establish that from the date of birth of each child and until the Application was filed July 16, 2013, Marcus Fauls was affirmed as the father of both children, he shared the physical care custody and control of both children in his residence in Washoe County Nevada, there had been no prior incidents of threats or harassment and police and "CPS" had never been called to address family issues, and the application itself does not contain facts to support any act of NRS 33.018 domestic violence. The court may review this document for purposes of considering whether to exercise its discretion and grant extraordinary writ relief in this case.

APPLICATION July 16, 2013

Page, line	fact
1 20	the parties Crystal and Marcus were engaged to be married.
1 21	I am the fiance'
1 23	relationship is five years
1, 23-24	parties lived together the last 4 ½ years,
1, 25	Crystal separated from Marcus July 15, 2013
1, 26	Crystal and Marcus have children together
2, 23-28	applicant and adverse party have two children born on dates as noted and who live with father and mother. Jayden born 8-29-10, Aunika born 8-26-12
3, 10-11	as of July 16, 2013 neither parent had been awarded child custody

1 3, para 7, 8 lines 23-28: neither parent ever filed for protection from domestic violence, stalking,
2 harassment, and child protective services (CPS) has never been contacted regarding the members
3 of the household in the past year. CPS is not currently involved with the family.

4 4, para 9 firearms: Marcus owns a firearm and has never threatened harassed or injured you
5 (Crystal) or children or any person with a firearm
6

7 4 para 10: Crystal checks box that states a conclusion: I have been or reasonably believe I will
8 become a victim of domestic violence committed by the adverse party; and a box that the
9 children have been or are in danger of becoming a victim of domestic violence:

10 4, para 10 The application then asks a person to state specific facts, including approximate dates
11 and places of events that support the claim of belief:
12

13 4. 18-28 no claim of law enforcement, no claim of medical personnel, Please read the
14 specific facts, there is no direct evidence of domestic violence, only subjective fear and concern
15

16 Signature page: signed by affiant but not dated

17 **2,3,4 TEMPORARY ORDER, EXTENDED ORDER AND ORDER AFTER HEARING**

18 Temporary Order page 5: signed July 16, 2013 by Hearing Master Edmunson , not be a judge;
19 page 8, entitled Order and Notice bears a judge electronic or stamped signature without any date
20

21 Extended Order page 5, dated July 31, 2013 signed by court master Casey Campbell, not a
22 judge, and page 10 Order and Notice, bears a judge electronic or stamped signature without any
23 date.
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