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17 **IN THE SUPREME COURT OF**
18 **THE STATE OF NEVADA**

19 CHRISTINA CALDERON STIPP,
20
21 Appellant/Cross-Respondent,
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23 v.

SUPREME COURT CASE NO.: 57327

24 MITCHELL DAVID STIPP
25
26 Respondent/Cross-Appellant.

27 **REPLY TO FAST TRACK RESPONSE**

28 Respondent/Cross-Appellant, Mitchell David Stipp ("Mitchell"), by and through his attorney
Radford J. Smith, Esq., of the firm of Radford J. Smith, Chartered, hereby files the above-captioned
reply to the Fast Track Response of Appellant/Cross-Respondent, Christina Calderon-Stipp
("Christina"), which was filed on July 18, 2011 (Document No. 11-21472). Christina's Fast Track
Response objects to the inclusion of Dr. John Paglini's child custody assessment, but then proceeds to
mischaracterize its contents. She has also seen fit to include misstatements regarding proceedings

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Aug 01 2011 03:58 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

1 occurring after the time of the filing of the appeal or cross appeal. The child custody evaluation, and its
2 grounds for the conclusions reached by Judge Sullivan that justified his going forward with an analysis
3 of custody, are addressed below.

4 **1. Child Custody Evaluation.¹**

5 Dr. Paglini concluded in his report that there are no contraindications that exist that would
6 preclude Mitchell from having more physical time with the parties' children. Dr. Paglini determined
7 that Mitchell is a fit parent: he does not exhibit any significant parenting deficits, he has positive
8 qualities, and possesses numerous resiliency factors. Dr. Paglini also concluded that Mitchell provides
9 excellent care toward the children and he is actively involved in the children's lives. Dr. Paglini did not
10 find that Mitchell possesses any mental health issues or abuses alcohol and did not have any concerns
11 with respect to Mitchell's driving record.
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14 Dr. Paglini did not conclude in his report that Mitchell should not be provided additional time
15 with the parties' children. However, Dr. Paglini did express concern over Mia's treatment by Dr.
16 Kalodner despite the fact that Christina revoked her consent. Nevertheless, the district court in its
17 judicial discretion tacitly rejected Dr. Paglini's reservation in its written decision by providing Mitchell
18 additional time.²
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20 Dr. Paglini identified several areas of concern with respect to Christina which further support
21 adequate cause for an evidentiary hearing pursuant to *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123
22 (1993). The primary areas for concern detailed by Dr. Paglini in his report are as follows: (1) matters
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25 ¹ For a more comprehensive examination of Dr. Paglini's child custody report, Mitchell refers this Court to his supplement
26 filed on May 3, 2010. See R.App. pgs. 142-198. Mitchell's supplemental filing was permitted under EDCR 2.20(f) by order
27 of the district court. The district court took Mitchell's supplement under advisement at the hearing on May 6, 2010 and
specifically referenced it as part of the record in the recitals to its written decision. App., Vol. 1, pgs. 147-171; App., Vol.
VIII, pgs. 1495-1514.

28 ² The district court ratified Mitchell's decision to work with Dr. Kalodner even after Christina revoked her consent when it
ruled at the hearing on December 8, 2008: if the parties could not work together and agree, the parties may each obtain their
own therapist for Mia. App., Vol. V, pgs. 981-988 (paragraph 3 on pg. 985).

1 related to Dr. Kalodner, (2) the exposure of Mia to derogatory statements about Mitchell and Amy, and
2 (3) Christina's unresolved issues toward Mitchell because of Mitchell's marriage to Amy.

3 Dr. Paglini interviewed Dr. Kalodner for purposes of the child custody evaluation. During that
4 interview, Dr. Paglini reports that Dr. Kalodner communicated the following to him with respect to
5 Christina: (1) Dr. Kalodner felt that Christina was attempting to dictate the pace of her practice (e.g.,
6 Christina wanted to bring the parties' daughter, Mia, in for the sessions and exclude Mitchell's wife,
7 Amy); (2) Christina made threats to Dr. Kalodner; (3) Dr. Kalodner felt that Christina was manipulating
8 Mia's therapy and was litigious; (4) Dr. Kalodner reported that Christina's correspondence to her had
9 numerous untruths and manipulated their conversations; (5) Dr. Kalodner felt manipulated by Christina
10 and felt that she lacked trust in Christina because she misrepresented the facts of their meetings; and (6)
11 Dr. Kalodner reported that she felt very harassed by Christina, and as such engaged an attorney.
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14 It is important to note that Dr. Paglini acknowledged in his report that it is quite possible that
15 Mia was exposed to conflict between Mitchell and Christina, and internalized Amy and Mitchell as bad,
16 that it is quite possible that Mia overheard conversations between Christina and her family members,
17 and perhaps it did occur that Christina made derogatory comments to Mia. Dr. Paglini noted that it was
18 consistent with these conclusions that Mia repeated such comments to Dr. Kalodner on a spontaneous
19 basis. Therefore, Dr. Paglini thought that Mia heard these comments in her environment and interpreted
20 impressions from her parents, or Christina made these comments to Mia. Moreover, Christina admitted
21 to Dr. Paglini when asked about whether she made negative statements to Mia about Mitchell and Amy
22 that she was not a perfect person and that she made mistakes. Interestingly, Dr. Paglini does not report
23 that Christina denied making these statements to Mia.
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26 While Dr. Paglini does not believe Mia was emotionally abused by Christina and Christina's
27 alleged bad acts did not actually result in alienation according to his report, Dr. Paglini reached this
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1 conclusion because at the time of his assessment (i.e., four (4) months after Mitchell filed his motion),
2 Mia showed no signs of significant trauma and appeared bonded both with Mitchell and Amy. In other
3 words, there was no lasting effect on Mia.

4 Despite these circumstances, Dr. Paglini concluded in his report that Christina likely had
5 unresolved issues towards Mitchell. He indicated that Christina was angry about alleged affairs (which
6 Mitchell has denied and Dr. Paglini did not confirm). She had to deal with Mitchell moving on with his
7 life and marrying Amy after their divorce and Amy moving into the home previously occupied by the
8 parties, and she had to negotiate the emotions of having Amy involved in the children's lives. Dr.
9 Paglini concluded that there is no doubt that these dynamics resurfaced in early September of 2010.
10

11 As Dr. Paglini clearly points out, these events and circumstances occurred after the parties entered into
12 the stipulation and order signed by the parties on July 8, 2009 and entered by the district court on August
13 7, 2009 ("SAO"). App., Vol. IV, pgs. 716-719.

14 **2. Post-Appeal Proceedings before Judge Potter.**

15 Christina discusses at length in her Fast Track Response matters before Judge Potter in the
16 district court at hearings held on October 6, 2010, December 1, 2010, April 12, 2011 and June 15, 2011.
17 However, she does not include citations in her response to any of the transcripts, pleadings, papers and
18 orders from these hearings to support her statements. In fact, Christina mischaracterizes Mitchell's
19 position on such matters (including the current state of the mental health of the parties' children). If the
20 Court desires to review the entire record before the district court at these hearings prior to rendering its
21 decision, Mitchell does not object. Unless it does so, however, the Court should disregard Christina's
22 statements on these matters. This Court should note, however, that Christina's view of the mental health
23 of the parties' children is now inconsistent with her position during the pendency of the litigation as set
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1 forth in her pleadings and papers before Judge Sullivan and Dr. Paglini's assessment in his report,
2 positions that are part of her present appeal.

3 **3. Evidentiary Hearing.**

4 Mitchell filed his motion on October 29, 2009. App., Vol. IV, pgs. 720-790. Unfortunately, the
5 district court did not issue its written decision until more than one year later (and almost six months after
6 the hearing in which it took the matters under advisement). App., Vol. VIII, pgs. 1495-1514. Christina
7 unfairly and inappropriately blames Mitchell in her Fast Track Response for the failure of Judge
8 Sullivan to render his written decision timely and/or follow the guidance set forth in *Rivero v. Rivero*,
9 216 P.3d 213 (Nev. 2009) (hereinafter "*Rivero II*"). The case has also been re-assigned from Judge
10 Sullivan in Department O to Judge Potter in Department M. Under these circumstances, and given
11 likelihood that the case may be remanded anyway to make the various factual findings as discussed in
12 Mitchell's Fast Track Statement and Response, Mitchell believes this Court should simply instruct the
13 district court to hold an evidentiary hearing to resolve finally the issue of physical custody. An
14 evidentiary hearing will provide both parties due process before the parties' physical custody and/or the
15 timeshare arrangement are changed in light of the new definition of "joint physical custody" in *Rivero*
16 *II*. Each of the parties should have an opportunity to conduct discovery and to provide documentary
17 evidence and witness testimony that is admissible by the district court on the actual physical custody
18 arrangement that exists between the parties, the existence or absence of changed circumstances affecting
19 the welfare of the children since entry of the SAO, and the timeshare arrangement that serves the best
20 interests of the children. An evidentiary hearing will also allow Judge Potter, who has been assigned to
21 the case, to consider all such relevant evidence and testimony offered by the parties on such matters and
22 render a written decision with specific factual findings that actually complies with the requirements of
23 *Rivero II*.
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Dated this 1 day of August, 2011.

RADFORD J. SMITH, CHARTERED



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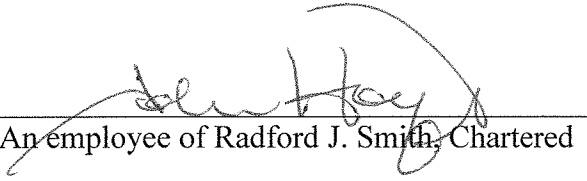
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2 **CERTIFICATE OF SERVICE**

3 I hereby certify that I served the foregoing document described as "REPLY TO FAST TRACK
4 RESPONSE" by mail pursuant to NRAP 25 on this 1 day of August, 2011, to all interested parties
5 as follows:
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