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IN THE SUPREME COURT OF
THE STATE OF NEVADA

CHRISTINA CALDERON STIPP,

Appellant/Cross-Respondent,

v.

MITCHELL DAVID STIPP,

Respondent/Cross-Appellant.

CASE NO.: 57327

**MOTION TO STRIKE RESPONSE TO MOTION FOR EXTENSION OF TIME TO FILE
AMICUS CURIAE BRIEF AND AFFIDAVIT OF APPELLANT/CROSS-RESPONDENT**

Mitchell David Stipp, Respondent/Cross-Appellant named above ("Mitchell"), by and through his co-counsel of record, Radford J. Smith, of Radford J. Smith, Chtd., hereby requests this Court to strike from the record in this appeal the response (Docket No. 12-25767) filed by Patricia Vaccarino, of Vaccarino Law Office, on behalf of Christina Calderon Stipp, Appellant/Cross-Respondent named above ("Christina"), and Christina's affidavit in support of the response filed concurrently therewith

1 (Docket No. 12-25768). This Motion is filed pursuant to Rule 27 of the Nevada Rules of Appellate
2 Procedure.

3 This Motion is based upon the attached Points and Authorities, the affidavit of Radford J. Smith
4 attached as Exhibit "A" hereto, and all other papers and pleadings on file in this case.
5

6 DATED this 16th day of August, 2012.



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17 POINTS AND AUTHORITIES

18 The State Bar of Nevada, Family Law Section ("FLS"), through its Committee Chairperson,
19 Sarah Hardy-Cooper, Esq., filed on July 31, 2012, a motion for an extension of time to file its amicus
20 curiae brief in this case (Docket No. 12-24051) (the "FLS Motion"). Pursuant to a telephonic request
21 received on August 6, 2012, the Clerk of this Court permitted Ms. Vaccarino on behalf of Christina to
22 file and serve on or before August 16, 2012 an opposition to the FLS Motion (Docket No. 12-24795).
23 On August 15, 2012, Ms. Vaccarino filed a response to the FLS Motion (Docket No. 12-25767) together
24 with an affidavit from Christina in support thereof (Docket No. 12-25768) (collectively, "Christina's
25 Response").

26 This Court entered an order inviting amicus curiae participation in this case by FLS (Docket No.
27 12-13008). Through this order, the Court specifically invited FLS to address "whether, in light of the
28 circumstances presented in this case, this court should revisit its decision in Rivero v. Rivero, 125 Nev.

1 410, 216 P.3d 213 (2009).” In the FLS Motion, and in response to this Court’s invitation, FLS revealed
2 that it was currently examining whether this Court’s decision in Rivero should be “revisited or clarified
3 related to how a day is calculated under the Rivero timeshare analysis.” FLS Motion, pg. 2, Lines 16-20.
4

5 Christina’s Response makes it clear that Christina does not oppose the extension of time
6 requested by the FLS Motion. See Christina’s Response, pg. 1, Lines 16-18. However, Christina’s
7 Response asks that this Court direct FLS to address three (3) additional issues, which Christina now
8 believes are matters this Court (and FLS) should address in this case. Christina has had an opportunity
9 to address her issues on appeal through the fast track briefing process, which was completed on or about
10 August 15, 2011. These new “issues” which Christina now attempts to raise on appeal are not legal
11 issues. They appear to be framed as attacks on the family court judiciary generally and Mitchell
12 specifically simply because Judge Frank Sullivan decided to confirm the parties as joint physical
13 custodians and award Mitchell a mere nine (9) additional hours of timeshare on the third (3rd) Friday of
14 each month.
15

16
17 In addition to raising these “issues,” Christina’s Response appears to brief them fully using
18 outright misrepresentations of matters before the district court and the current record on appeal in this
19 case (including Dr. Paglini’s child custody evaluation), wholly unsupported and baseless allegations
20 leveled against Mitchell, and either a misunderstanding or plain unwillingness to follow applicable
21 district court and appellate procedure. Furthermore, Christina has now taken the liberty to address her
22 legal position with this Court on the calculation of a day under Rivero *even before* FLS has filed its
23 brief.
24

25 While Mitchell would prefer to address all of Christina’s factual errors, personal attacks, and
26 erroneous conclusions found in Christina’s Response, Mitchell does not believe it is practical to do so.
27 This Court has not invited Christina to raise or brief additional issues. Furthermore, the matters raised
28

1 by Christina's Response appear to be issues she intends to address directly with the district court in a
2 new motion, which purportedly will include the affidavit she filed as part of Christina's Response. See
3 Christina's Response, pg. 5, lines 2-3. This Court should note that Christina's affidavit failed to include
4 any of the exhibits that Ms. Vaccarino claims support Christina's Response and her new motion. If this
5 new motion is filed with the district court, Mitchell will address the matters in that forum and file a copy
6 of his opposition with this Court (if the Court requests that Mitchell do so). However, for the reasons
7 set forth above, Mitchell would prefer and respectfully requests that this Court simply strike Christina's
8 Response from the record on appeal in this case.
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12 DATED this 16th day of August, 2012.

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EXHIBIT "A"

AFFIDAVIT OF RADFORD J. SMITH, ESQ.

I, RADFORD J. SMITH, being first duly sworn, deposes and states:

1. I am a member in good standing of the State Bar of Nevada and co-counsel of record in the case of Christina Calderon Stipp v. Mitchell David Stipp, Case Number 57327 in the Nevada Supreme Court. I submit this affidavit in support of Mr. Stipp's "Motion to Strike Response to Motion for Extension of Time to File Amicus Curiae Brief and Affidavit of Appellant/Cross-Respondent" (the "Motion").

2. I have prepared and read the Motion and know the contents thereof, that the same is true of my own knowledge, except for those matters therein contained stated upon information and belief and, as to those matters, I believe them to be true.

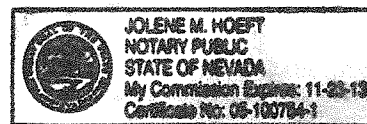
3. I further submit that the Motion is filed in good faith, and not intended for the purpose of harassment or to cause an undue delay in this matter.

FURTHER, AFFIANT SAYETH NOT.


RADFORD J. SMITH

Subscribed and sworn before me this 16th day August, 2012.


NOTARY PUBLIC in and for the State of Nevada



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