IN THE SUPREME COURT OF THE STATE OF NEVADA

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KIRK ROSS HARRISON,

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

NO. 66157

REPLY IN SUPPORT OF MOTION TO REMOVE APPEAL FROM FAST TRACK PROGRAM AND TO SUSPEND TIME FOR FAST TRACK STATEMENT PENDING DECISION ON MOTION TO REMOVE APPEAL FROM FAST TRACK PROGRAM

Appellant Kirk Harrison's motion was filed pursuant to NRAP 3E(g)(2), and the court has ample authority to grant this motion pursuant to the explicit language of the rule. Rule 3E(g)(2) provides that a case can be removed from the fast track program where issues in the appeal are too complex and/or to numerous for resolution in the program.

Respondent's opposition first contends that certain issues identified in appellant's motion were not in appellant's docketing statement. (Opp. p. 1). An appellant's identification of issues in a docketing statement "is not binding on the court, and the parties' briefs will determine the final issues on appeal." NRAP 14(a)(5). In this case, Kirk's docketing statement identified issues involving orders dealing with teenage discretion and parenting coordinators. These issues are broad enough to encompass the issues Kirk has identified in the present motion. And even if other issues were not included in the docketing statement's issue, such an omission does not preclude Kirk from raising the issues in the briefs, pursuant to NRAP 14(a)(5).

Kirk's motion identifies 10 issues and sub-issues, which amply demonstrate that the issues in this appeal are "complex and/or too numerous for resolution in the fast track program." NRAP 3E(g)(2). But this appeal does not just deal with Kirk's 10 issues. Respondent's cross-appeal docketing statement identifies two additional issues: (1) whether the district court erred regarding respondent's award of attorneys' fees and costs; and (2) whether the district court erred in not imposing sanctions against Kirk. Thus, the parties have identified a total of 12 separate issues and sub-issues in the appeal and the cross-appeal.

The opposition also contends that some of the issues identified in Kirk's motion "are not germane to this case." (Opp. p. 1) Kirk and his counsel disagree; all of the issues are very germane and important in the appeal. In any event, the present motion is neither the time nor the place for a determination as to whether various issues are "germane." If Kirk's brief addresses an issue that respondent believes is not germane, respondent's answering brief will provide her with a full opportunity to make her argument. Kirk's reply brief will then address the question, and the court will decide whether the issue is relevant and appropriate. Such a determination should not be made now, in the context of this procedural motion.

The opposition presents arguments on the merits of the appeal issues. As noted above, these arguments are more appropriate for briefing on the merits, rather than the pending motion. However, the opposition's arguments will be briefly addressed in this reply.

The opposition presents several contentions dealing with whether the district court committed error. The opposition includes contentions relating to the legal impact of a stipulation; the fact that Kirk is an attorney; contract enforcement and interpretation; public policy concerns; and the scope and impact of a parenting coordinator provision. (Opp. pp. 1-3) When this appeal is briefed, the record will

show that Vivian would not have been awarded primary custody. Kirk was forced to walk away from his career because Vivian no longer wanted to take care of the children. For the next almost six years, until about when the complaint for divorce was served on September 14, 2011, Kirk was the only parent who took care of the children on a day-to-day basis. Unrefuted affidavits documented Vivian's neglect, abuse and abandonment of their minor children.

The operative language in the "teenage discretion" provision was drafted by Vivian's counsel and ambiguously provides, in part, that the parties "**intend to allow the children to feel comfortable. . .** in requesting and/or making adjustments to their weekly schedule. . ." The ambiguity of the provision is further evidenced by the fact that the interpretation of the provision by the parties and their respective counsel is diametrically opposite. Both of Kirk's trial court attorneys submitted affidavits stating the provision only gives the 14-year-old child the right to make a request, and it is undisputed that Kirk, who had no prior experience in family court, was so advised. In sharp contrast, despite the fact that the parties agreed to share joint custody on a 50-50 bi-weekly basis, one of Vivian's attorneys later swore in an affidavit that because of the teenage discretion provision, Vivian "will have de facto primary custody."

Although Vivian's attorneys drafted the ambiguous language which is at issue, they chose not to use the words which they now claim the language to mean, namely, that a 14-year-old child can essentially order her father to make modifications to the weekly custody schedule and he must obey without discussion.

There is nothing in NRS 125.480 which authorizes or even remotely suggests that a 14-year-old child should be empowered to order her parent to make modifications to the weekly custody schedule, which the parent must obey without discussion. Teenage discretion provisions, so interpreted, foreseeably cause instability and uncertainty for the children, expose minor children to significant long term

emotional harm, cause undue stress upon the minor child and her younger sibling, and significantly undermine parental authority. There is an expert report, from a highly regarded psychiatrist, which sets forth the dire consequences and horrendous ramifications of this teenage discretion provision, as interpreted by the trial court.

So-called "teenage discretion" provisions disregard the best interests of minor children, expose minor children to significant long term emotional harm, substantially undermine parental authority, and are therefore a violation of public policy. This court made it clear in *Rivero v. Rivero,* 125 Nev. 410, 216 P.3d 213 (2009) that contracts which are "in violation of public policy" will not be enforced. *Id.* at 429, 216 P.3d at 227.

The parenting coordinator provision at issue was drafted solely by Vivian's attorneys and consists of one paragraph, which provided that the parties would "hire a Parenting Coordinator **to resolve disputes** between the parties regarding the minor children." (Emphasis added.) It is undisputed that when Kirk asked, he was told a parenting coordinator was a mediator. No terms whatsoever were set forth regarding the retention of a parenting coordinator. Rather, one short sentence merely provided, "The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon by the parties." An agreement to agree is not an enforceable agreement. *May v. Anderson*, 121 Nev. 668, 119 P.3d 1254, 1257 (2005).

Courts across the country have consistently held that a court may not delegate its judicial power to determine the visitation or custody arrangements of the parties as was done here. The trial court's review is highly deferential to the "recommendation" of the parenting coordinator, therefore the delegation of judicial power under these circumstances violates the due process rights of the parties and is unconstitutional.

Full briefing will show that parenting coordinators in Nevada have unparalleled arbitrary and invasive power over families after a divorce, including powers such as ordering psychiatric examinations of the parents, talking to a parent's attorney without notice to the parent (and without the parent's presence), and obligating a parent to pay the coordinator's legal fees if the parent files a grievance against the coordinator.

It is apparent that these important issues involve matters of first impression and statewide precedent. These issues are far too complex and numerous for the fast track program, in which fast track statements and responses (i.e., the briefs) are extremely limited in size. In determining these important issues, the parties should be able to provide the court with full, comprehensive briefs.[1]

Dated: March 17, 2015

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[1] Kirk's motion argued that removal of this case from the fast track program would not cause any harm to the children or prejudice to respondent. (Motion p. 4) Vivian's opposition does not contest Kirk's argument on this point.

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CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date the foregoing was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Edward L. Kainen
Thomas J. Standish
Radford J. Smith
Gary R. Silverman
Mary Anne Decaria

I further certify that on this date I served a copy of this notice, postage prepaid, by U.S. Mail to:

Kirk Harrison
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Boulder City, Nevada 89005

Settlement Judge Lansford Levitt
4747 Caughlin Parkway
Suite 6
Reno, Nevada 89519

DATED: 3/17/15

Vicki Shapiro, Assistant to
ROBERT L. EISENBERG