IN THE SUPREME COURT OF THE STATE OF NEVADA

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KIRK ROSS HARRISON,

Appellant/Cross-Respondent

NO. 66157

vs.

VIVIAN MARIE LEE HARRISON,

Respondent/Cross-Appellant.

_____/

CHILD CUSTODY FAST TRACK STATEMENT

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CHILD CUSTODY FAST TRACK STATEMENT

1. **Party filing this statement:** Kirk Ross Harrison

2. **Attorney submitting this fast track statement:** Robert L. Eisenberg, Lemons, Grundy & Eisenberg, 6005 Plumas Street, Third Floor, Reno, Nevada 89519 (775)786-6868.

3. **Lower court**: Eighth Judicial District Court, Clark County, No. D-11-443611-D

4. **Judge:** Judge Bryce C. Duckworth

5. **Length of trial or evidentiary hearing:** None

6. **Written order or judgment appealed from:** Order for Appointment of Parenting Coordinator, October 29, 2013; Decree of Divorce, October 31, 2013, only to the extent it deals with child custody related matters; Order, filed December 17, 2013, denying Plaintiff's Motion to Modify Order Resolving Parent/Child Issues and For Other Equitable Relief; Order from Hearing, related to Plaintiff's Motion For A Judicial Determination of the Teenage Discretion Provision, June 13, 2014, and; Findings and Orders Re: May 21, 2014 Hearing, September 29, 2014.

7. **Dates notice of entry served:** October 29, 2013, October 31, 2013, December 19, 2013 (via certificate of mailing), June 16, 2014, and September 29, 2014, respectively.

8. **Tolling motion:** Motion to Alter, Amend, Correct and Clarify Judgment, served on November 20, 2013, and filed on November 14, 2013; notice of order resolving motion: June 13, 2014.

9. **Date notice of appeal filed:** July 17, 2014; Amended/Supplemental Notice of Appeal filed October 16, 2014.

10. **Law governing time limit for notice of appeal:** NRAP 4(a).

11. **Law granting jurisdiction:** NRAP 3A(b)(1).

12. Pending and prior proceedings in this court: Harrison vs. Harrison, No. 66072.

13. Proceedings raising same issues: None.

14. Procedural History: Appellant (Kirk), and Respondent (Vivian) are the parents of five children. The two youngest are Brooke, born June 26, 1999 and Rylee, born January 24, 2003.

During divorce proceedings, Kirk filed a motion for joint legal and primary physical custody and other relief. Their adult daughters filed affidavits supporting Kirk's motion. 2A.App.181-207. Vivian filed an opposition and a countermotion seeking primary custody and other relief. On February 24, 2012, the district court issued its minute order, giving Kirk four custodial days each week, and giving Vivian three custodial days each week. 5A.App.930-933.

The district court subsequently entered an Order Resolving Parent/Child Issues (pursuant to stipulation). The parties agreed to 50/50 bi-weekly joint custody where each parent has custody of the children the same two days each week, and alternate custody the three other days each week. 5A.App.934-950. The stipulation also contained a parenting coordinator provision and a teenage discretion provision. 5A.App.938-39.

Vivian later filed a motion for an order appointing a parenting coordinator and for other relief. Kirk filed an opposition. 5A.App.985-1019. The trial court granted the motion. 6A.App.1182-1190.

The record reflects that Vivian violated safeguards contained in the teenage discretion provision in the Order Resolving Parent/Child Issues. Among other things, Vivian convinced Brooke that after her fourteenth birthday she could exercise power to leave Rylee, her ten-year-old sister, for one-half the time and live full time with Vivian. 5A.App.1038-1039. One day Brooke announced to Kirk that she was going

to live with Vivian full time. Kirk asked why, and Brooke responded "Girls are supposed to live with their mommies." *Id.*

On October 1, 2013, Kirk filed a motion to modify parent-child orders. 5A.App.1035-1055. Vivian filed an opposition and countermotions. During the hearing on these motions, the court made it very clear that Brooke could not choose to leave her little sister and Kirk to live with Vivian full time:

> The parties agreed that it was in the best interest of the children to exercise joint physical custody. I don't want this to become a situation where it's just a matter of time and as soon as you turn 14 you get to decide where you want to live. That's - - that's not how it works and under NRS 125.490, there is a presumption now because you agreed to joint physical custody, there is a presumption that joint physical custody is in the best interest of the children.

7A.App.1473-1474.

The trial court, however, did not decide whether Brooke could order modifications to the weekly custody schedule. On December 17, 2013, the trial court issued its order denying Kirk's motion and Vivian's countermotion. 6A.App.1264-1265.

The children and Kirk continued to be plagued by Vivian's interpretation of the teenage discretion provision. Kirk was deprived of seeing Brooke for two weeks as a direct consequence of the implementation of the teenage discretion provision. 6A.App.1193-1195. On November 18, 2013, Kirk filed a motion seeking interpretation of the teenage discretion provision. 6A.App.1191-1225. The trial court denied Kirk's motion. 7A.App.1428-1433.

By this time, the interpretation of the teenage discretion provision by Vivian and her attorneys was very clear. Their position is that Brooke (age 14) could **order** Kirk, at any time, to take her to Vivian's house during Kirk's custody time and he must obey. 6A.App.1195. In fact, on September 11, 2013, one of Vivian's attorneys filed an affidavit providing "Mr. Harrison must have known the 'teen' exception in the

custody agreement will be exploited by the girls and it is Vivian who will have de facto primary custody." 5A.App.1033.

It was obvious to Kirk that this provision, as interpreted, was damaging to his minor children and damaging his relationship with both children. Up to this point, the trial court had simply denied the motions and countermotions, without ever ruling whether Brooke could issue an order that Kirk was required to obey.

Dr. Norton Roitman, a prominent psychiatrist in Las Vegas, was requested to render an opinion on the affect of the provision. Dr. Roitman provided his written opinion on January 14, 2014. 6A.App.1299-1311. Because of yet another problem caused by Brooke making a demand to modify the weekly custody schedule, Kirk filed a motion to modify child-related orders. 6A.App.1266-1340. Exhibits to this motion included Dr. Roitman's written opinion and affidavits of Tom Standish and Ed Kainen (Kirk's attorneys). Standish swore to his understanding that the teenage discretion provision provided that the child could only make a request:

> As written, it was my interpretation of the provision that after the age of 14 years, the child could make a request. It was never my understanding under this provision that a child could order a parent to make a change to the weekly schedule and the parent had to obey . . .

6A.App.1297.

Similarly, Kainen swore his interpretation of the teenage discretion provision was:

> The parties' parenting agreement gives the children the ability to *request* changes to the custodial schedule. It *does not* give the children carte blanche to make changes to the custodial schedule whenever they see fit.

6A.App.1212.

Kirk also challenged the parenting coordinator provision in the parenting plan. 6A.App1280-1287. Vivian filed an opposition. 7A.App.1341. At a hearing on the motion, the trial court noted that if it viewed the teenage discretion provision as only

giving Brooke the right to make a request, it would render the entire provision meaningless. 7A.App.1492. The inescapable conclusion, therefore, is the trial court ruled that Brooke is empowered to order Kirk, and Kirk must obey. During the hearing, the trial court, *sua sponte*, struck Dr. Roitman's report regarding the teenage discretion provision.[1] 7A.App.1523. The trial court subsequently denied Kirk's motion and granted Vivian attorney's fees. 7A.App.1434-1441.

15. Statement of Facts:

A. Custody Background Facts.

Shortly after giving birth to Rylee, Vivian started taking controlled substances. These drugs are in the amphetamine pharmaceutical family, work on the central nervous system, and are so powerful they are only supposed to be taken for a few weeks. Through discovery, it was confirmed that Vivian took these drugs for over seven years. 4A.App.680-683,753,796-799.

As a consequence, Vivian had severe insomnia, significant delusions, and was unstable, volatile, aggressive, assaultive, emotionally abusive, and physically abusive. 1A.App.43,51,66-67,99-100,175,181-82,187,199,204; 4A.App.699,725,753,801,846-49,863,912; 5A.App.909; 6A.App.1144-1145,1168. Also through discovery, it was learned that Vivian told a psychiatrist, Dr. Sean Duffy, that "She is feeling very tense, irritable, and reactive to her family dynamics manifesting as **frequent arguments and anger on her part**." 5A.App.909(emphasis added). As Vivian continued to take these drugs during the next six years, her behavior deteriorated more each year. 1A.App.186,198,200; 4A.App.750-751.

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[1] In response to Kirk's oral motion, the trial court struck Vivian's reply brief. Motivated to not have Vivian's reply brief struck, Vivian stipulated that neither document would be stricken. The trial court, reluctantly, agreed. 7A.App.1523-1530.

Dr. Duffy also noted "there is considerable ambivalence about her relationship with her husband and her older children." 5A.App.909. By the fall of 2005, Vivian wanted little to do with Brooke (then 6 years old) and Rylee (then 2 years old) on a day-to-day basis, other than sleep in the same bed with them. 1A.App.194-195,198,206. 5A.App.909. Vivian withdrew from the family more each year. 1A.App.198. 4A.App.750-751.

With Vivian no longer wanting to be a mom on a day-to-day basis, Kirk had no choice but to leave his thriving legal practice, and resigned from Harrison, Kemp & Jones, Chtd., to take care of the girls on a full-time basis. 1A.App.15; 4A.App.750; 7A.App.1378.

For the next almost six years, Kirk was essentially a single parent for the girls. He took them to school and activities; he did all the grocery shopping; he helped them with their homework; and he alone provided all the care and nurturing that parents usually provide. 1A.App.18-19,195; 4A.App.701-706, 750-751.

During this same six year time period, Vivian did very little with Brooke and Rylee on a day-to-day basis. 1A.App.97,194. Vivian did not care whether the girls did their homework. 1A.App.194,206. In just 2010, Vivian chose to spend over five months away from Brooke and Rylee, mostly traveling to Europe and Asia. 1A.App.25-26,30. When Vivian was home, she would sequester herself behind the closed door in the home office away from the rest of the family, including Brooke and Rylee. 1A.App.194-195,206. Vivian would go months without having a meal with Brooke and Rylee in their home. 1A.App.206,112-113. At one point Brooke, then 11 years old, commented that Rylee "has really never had a mom." 1A.App.131-132.

Vivian became extremely delusional. She believed their oldest daughter wanted to kill her. 1A.App.99-100,204. She claimed to be a "master soul" because she had been reincarnated so many times. 1A.App.188. She told several people that a 32-

year-old actor she had never met was her "soul mate" and she spent years in pursuit of this actor. 1A.App.25-26,30,187-188,201-202.

Over the years, while Vivian was abusing prescription drugs, she was consumed with one obsessive compulsive behavior after another. 1A.App.25-26,156-57. Her increasingly obsessive compulsive behavior, in many instances, was to the total exclusion of Brooke and Rylee, and an emotional and physical abandonment of them. 1A.App.194-195,206; 4A.App.687-692,750-751,753.

Vivian also has a history of physical violence against their children and Kirk. 1A.App.43,51,66-67,175,181-82,199;4A.App.699,753,846-49;6A.App.1144-1145,1168. Despite FDA warnings to the contrary, Vivian took multiple drugs while she was nursing Rylee. 4A.App.680-683.

Vivian refused to get help. Kirk was unaware she had seen Dr. Duffy in 2005, although she only saw Dr. Duffy on an annual basis to get her SRRI prescription renewed. 4A.App.912-918. Vivian continued to deteriorate. 4A.App.750-751,803-805.

Kirk decided to seek advice from the best psychiatrist he could find. Since Vivian refused to see anyone, Kirk prepared an exhaustive summary of everything he knew about Vivian, hoping the psychiatrist could identify the causes of Vivian's behavior and, if possible, help Vivian. 4A.App.751. Two different people referred Kirk to Dr. Norton Roitman as the best psychiatrist in Southern Nevada, and Kirk provided the summary to Dr. Roitman. 4A.App.751-752. Kirk met with Dr. Roitman on January 15, 2010. Dr. Roitman later testified that during this meeting, Kirk "indicated that he was dedicated to the marriage, at least for the sake of the children, and would very much like to have a good relationship back with his wife as well." 5A.App.1129.

Unfortunately, Vivian continued to deteriorate during the next 15 months, becoming more confrontational, argumentative, delusional, manipulative, abusive, and exhibiting much of this behavior in front of both the adult and minor children. 1A.App.131-132,139-140,156-157,161-162,168-169,191-195,200-206.

Beginning in November of 2010, Vivian, temporarily, started spending time with Brooke and Rylee, and in late 2010 and January of 2011, Vivian made it very clear she was soon filing for divorce. 1A.App.149-150. On March 13, 2011, Vivian told Brooke (then 11 years old) and Rylee (then 8 years old), that she was filing for divorce, and the girls would need to choose the parent with whom they wanted to live. Vivian also indicated, in front of Brooke and Rylee, that she wanted to physically fight Kirk. 1A.App.161-162. Kirk filed for divorce five days later. 1A.App.1.

B. Negotiation of Teenage Discretion and Parenting Coordinator Provisions.

Kirk was not allowed to be present when the parenting coordinator and teenage discretion provisions were discussed between counsel during settlement negotiations. 7A.App.1371. Kirk had no prior experience in family law matters. 7A.App.1371. When he was shown the teenage discretion provision, he interpreted the provision as merely expressing an intention for Brooke to feel comfortable making reasonable requests, which the parents could grant or deny. *Id.* Tom Standish explained:

> 8. Kirk had never seen a teenage discretion provision before and did not know what it was. When he read it he expressed concern. I assured him with the changes I ultimately had made, it did not provide anything differently than the law otherwise provides. Kirk questioned if that was the case, then why was the provision necessary. I told him it was because Vivian was aware of teenage discretion and Mr. Smith said he had to have it in the agreement to satisfy his client.

6A.App.1296.

Vivian's attorneys drafted the parenting coordinator provision (6A.App.1281,1290), which provides as follows:

4. *Parenting Coordinator:* The parties shall hire a Parenting Coordinator **to resolve disputes** between the parties regarding the minor children. The Parenting Coordinator shall be chosen jointly by the parties. The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon by the parties. If the parties are unable to agree upon a Parenting Coordinator, or the terms of an Order appointing the Parenting Coordinator, within thirty (30) days of the date of the filing of this Stipulation and Order, then the Court shall appoint that individual and resolve any disputes regarding the terms of the appointment.

5A.App.938(emphasis added).

Kirk had been retained hundreds of times as a mediator **to resolve disputes.** 4A.App.1281,1290. However, Kirk had never heard the term "parenting coordinator," and when he read the parenting coordinator provision, he questioned what a parenting coordinator did. He was told that a parenting coordinator functioned as a mediator. 6A.App.1281,1290,1371. He assumed the term "parenting coordinator" was used to describe a mediator who specialized in custody issues for family court cases. Kirk responded he thought that was a good idea, as he strongly believed in the benefits of using a mediator. 6A.App.1281,1290; 7A.App.1371.

Since the signing of the stipulation, Kirk's position has been consistent with his understanding that the parenting coordinator would function only as a mediator. 6A.App.1281,1290. Kirk's proposed Order For Appointment of Parenting Coordinator, which Kirk submitted to the Court, empowers the parenting coordinator with powers of a mediator. 5A.App.1007-1012. Kirk's opposition regarding appointment of a parenting coordinator was also consistent with his understanding that the parenting coordinator functioned as a mediator. 5A.App.985-995.

When Kirk read Vivian's Motion for an Order Appointing a Parenting Coordinator, filed May 10, 2013, and later, the trial court's Order Appointing a Parenting Coordinator, filed October 29, 2013, Kirk felt as though he had been "sucker punched." 6A.App.1281,1290. Kirk did not agree to allow a non-judicial third party,

whom he had never met, to make parental determinations involving their children. 6A.App.1281,1290.

The trial court's Order Appointing a Parenting Coordinator provides that the trial court's review of the parenting coordinator's recommendations is highly deferential to the parenting coordinator:

> However, the parties are on notice and understand that the purpose and intent of the Court in appointing a Parenting Coordinator pursuant to the terms of their Parenting Plan is to resolve disputes between the parties without the expense of litigation. Therefore, the Court will overturn a Recommendation of the Parenting Coordinator only upon the showing of evidence to the satisfaction of the Court to warrant such a result.

6A.App.1187.

16. Issues on Appeal.

1. Whether the court erred in interpreting the teenage discretion provision to mean a child is essentially empowered to order her parent to make modifications to the weekly custody schedule, when it is contrary to the best interests of the child and her little sister, contrary to an expert opinion, and contrary to public policy.

2. Whether the court erred in interpreting a teenage discretion provision in favor of the drafter of the provision when the provision is ambiguous.

3. Whether the court erred in not ruling the parenting coordinator provision is too indefinite and uncertain to be regarded as a binding agreement.

4. Whether the court erred in not ruling the parenting coordinator provision is an agreement to agree and therefore unenforceable.

5. Whether the court erred in not ruling a valid contract cannot exist in a settlement agreement regarding the appointment of a parenting coordinator when material terms are lacking or are insufficiently certain and definite for there to be an offer and acceptance and a meeting of the minds.

6. Whether the court's granting judicial authority to the parenting coordinator violated Kirk's due process rights.

7. Whether Nevada should determine that is in the best interest of children post divorce to minimize third party intervention and prohibit the use of teenage discretion provisions and parenting coordinators.

17. Legal Argument:

A. The Court Erred in Interpreting the Teenage Discretion Provision to Mean a Child is Essentially Empowered to Order Her Parent to Make Modifications to theWeekly Custody Schedule, When it is Contrary to the Best Interests of the Child and Her Little Sister, Contrary to an Expert Opinion, and Contrary to Public Policy.

The uncertainty and instability of children not knowing where they are going to be from day to day takes a toll on children and is one of the primary issues associated with protracted divorce litigation. 6A.App.1137. Dr. Roitman advised Kirk to end the contentious divorce proceeding to avoid significant emotional damage to Brooke and Rylee. 6A.App.1257. Although he did not believe it was in Brooke's and Rylee's best interest to have joint custody, based on Dr. Roitman's strong advice, he felt he had no other choice but to allow Vivian to have joint physical custody. *Id.*

The parties settled custody on July 11, 2012, when the parties agreed to a certain 50/50 bi-weekly custody schedule. 5A.App.938-939. Under the agreed joint custody arrangement, the children knew from week to week the time they would be spending with each parent. There were no problems of any significance regarding custody from July 2012 until June 2013. 6A.App.1138, 1168, 1268, 1290; 7A.App.1388. Kirk had obtained the necessary stability, continuity, and certainty in the children's lives that he had hoped to achieve.

The importance of stability and certainty in children's lives cannot be overstated. Dr. Roitman opined:

> In this regard [that the children's best interests are met], to enable the family to achieve its natural balance in the aftermath of divorce, there needs to be minimal third party intermediaries to inject their various values into the family scheme once the asset and custody separation is enacted. Successful families, whether divorced or not, cannot be continuously subjected to the scrutiny of adverse party claims and counter claims without promoting blame and deterioration of the nest-like feeling children need for their own psychological well being and positive models for their own families once they get older. As soon as possible, after the family separation and breach, the system needs to be encouraged to heal to it's best potential. The only complaints that

> involve matters that are critical to the well being of the children should reopen the deliberation, and then limited to the least possible intervention. Like a wound in the process of healing, it should not be unnecessarily disrupted.

6A.App.1301.

Under a certain 50/50 bi-weekly custody arrangement, the children have certainty as to when they are supposed to be with their mother and father. The children also know that status quo will not change until they turn 18. Consequently, there is certainty and stability in their lives. Also, as a foreseeable consequence, a parent who is manipulative of the children knows that absent a significant change in circumstances, the status quo will not change. Therefore, there is no reason for a parent to attempt to manipulate the children into a desire to spend more time with that parent.

Unfortunately, the teenage discretion provision, which Vivian had Brooke implement after her 14th birthday, callously **creates** uncertainty and instability and the very adversarial positioning between the parties in which Brooke and Rylee are now inextricably enmeshed. It provides the motivation to the manipulative parent to convince the children to spend more time with her, rather than the parent unwilling to callously manipulate the children. The appointment of the parenting coordinator **creates** the readily available forum for the manipulative parent to continue the adversarial positioning. 6A.App.1272.

The teenage discretion provision, as interpreted and ordered by the trial court, negatively compromises the entire parenting scheme and may well have **deeply damaging** impacts upon Brooke and Rylee. To empower an adolescent as the controlling party in such a circumstance is serious and ill advised from a psychiatric perspective. As was demonstrated earlier, it also provides incentive for a former spouse to manipulate a minor child and thereby create instability and uncertainty for the child and her younger sibling.

The serious risk to Brooke and Rylee is simply too significant to allow this situation to continue. As Dr. Roitman observed:

> In this matter, the court is being to (sic) asked to rule on the preferences of a fourteen year old and granting her a power over her parents, **and therefore control over her entire family**. The court is in the position to decide to what degree a teenager's wishes should determine her regulations.
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> * * * *
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> Even in the best of circumstances, the court giving the adolescent decision-making power over the family system [is] of questionable psychological benefit. In the case of this family in particular, her choices are being made in the throws of constant parental dysfunction and allegations of unhealthy influence. **The ruling will effect the parental authority not just regarding this matter of time spent, but to all other issues for the next four [six] years, since the adolescent has basically veto power**. It set up the conditions in which the winning parent will be the indulgent parent and in this way, the youth escapes accountability. **There are no redos when it come to child development and mistakes are irreversible**. Only in delinquency, dependency and divorce is the state, through the court, given parental override.
>
> The willingness of the court to reenter into the fray of custody and it's implications is questionable from a child psychiatric perspective. **Authorizing a non-adult with a vested interest in their own pleasure can intoxicate them with power by undermining the relationship with family authority**. Children need their parents, not a court to chose winners and losers except where the child's health issue is critical and the differences between parents are detrimental and truly irreconcilable. A narrow participation is preferable to a global dictum, such is the case with the teenager discretion ruling.
>
> Instead of promoting the re-empowerment of the child's parental environment after a tumultuous divorce, **inserting the adolescent as the controlling party is an error. To do so is serious and ill advised from a psychiatric perspective. Placing the adolescent in the position of deciding when she is going to be with whom, even with an intact, functional family is a bad idea**. The teen should be granted increasing levels of authority in a step by step fashion so their expanding independence is supervised. At first they should not be given so much latitude that they can make irreversible mistakes. **Healthy families don't allow the child to go with one or another parent on impulse, just because they might be angry, or for some adolescent reason that don't (sic) make sense to the family as a whole**.

6A.App.1302-1303(emphasis added).

Dr. Roitman also makes it clear that the continued existence of this provision will have a devastatingly negative effect upon the younger sister, Rylee:

> A developing adolescent needs to be given discretion over some decisions to foster independence, but **it is irresponsible to give to them the key to determine how her family works, the power to reject parents, replace them, set into motion a contest to see who is more apt to grant her wishes, reduce her responsibilities and punish and reward the one who does not frustrate her.**
>
> * * * *
>
> **[T]he younger child now sees her sister being able to control parents by coming and going on a whim.**
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> * * * *
>
> It is not uncommon for teens in intact families to want to leave their little brothers and sisters and wish they had an alternative place to go. The sibship, though, is effected by these escapes and may take an entirely different course for the rest of their lives. Values in dependency court have turned toward preserving sibling groups. The teenage discretion allowance is 180 degrees opposed to this principle. The stress of giving the responsibility for the bond with her little sister and the impact on their future relationship should not be given, but imposed. **The family unit should be not taken for granted and not be continuously up to negotiations with the teenager making the final decision. Later in life both sisters could regret that the younger one was left behind feeling like a loser, rejected and powerless.**
>
> While the teenager thinks she is just going over to the other parent's house, and it is no big deal, she has no experience making decisions about what is best for her in the long run, the effect on her sister, or how a family should work. **The teenage discretion provision inevitably can negatively affect the younger daughter who does not have this 'right,' but may, as seeing it implemented, long to get it. In her mind she can feel less than the other child. She sees a parent rejected, perhaps in the middle of an argument, demand a ride. She can see disrespect for parental authority and their powerlessness. She can be left by her sister at the drop of a hat and can't depend on long time periods with both families. Modeling on her sister she is encouraged to accept that momentary emotions, temptations and enticements are the basis for decision making. It is never a good idea to allow the teen to abandon the sister or a parent in the middle of a dispute. They need to work out differences and reestablish their bond, and accept the results whether with a sibling or a parent.**

6A.App.1306(emphasis added).

Kirk never agreed to the trial court's interpretation and respectfully urges this court to not allow this to happen to their children.

Dr. Roitman concludes:

> **I can't envision any scenario where it would be in the best interest of a teenager to be able to order a parent to modify their custody schedule. This is especially true when younger siblings are affected by those decisions.**

6A.App.1311(emphasis added).

It is in the best interests of Brooke and Rylee for this court to reverse the trial court and to nullify and strike the teenage discretion provision. Kirk did not and would never agree to a provision, as it has been advocated by Vivian, implemented by Vivian and Brooke, and now interpreted by the trial court.

There is no legal basis for a teenage discretion provision. NRS 125.480(4)(a) merely provides the **court** should "consider" the wishes of certain minor children in the **court's** determination of custody. In addition, the term "teenage discretion" does not appear in any reported state court decision in the United States. This is not surprising, and it is shocking that teenage discretion provisions, which provide that a parent must obey a child's orders, are utilized in Nevada. One does not have to be a prominent psychiatrist or a caring parent to see this is a horrendously bad idea, will foreseeably emotionally damage the minor children, and completely undermine parental authority.

Empowering minors to determine modifications to their custody is a very bad idea. In *Parker v. Parker*, 112 So. 2d 467 (Ala. 1959), the trial court gave a child the sole right to determine, for at least half of each month, which parent should have his custody. In reversing, the Alabama Supreme Court held:

> **There seems to be little need to catalogue the reasons why such a provision is inappropriate.** It is sufficient to say that it places on this young child the exclusive responsibility of determining, **from time to time**, which parent should have custody. **Thus, a decision as to what is best for the child is made by the child himself and not by the court.**

112 So. 2d at 471 (emphasis added).

Similarly, in *Moore v. Moore*, 331 So. 2d. 742 (Ala. App. 1976), the trial court ordered visitation of the father only if expressly desired by the children. The appellate court found this to be an abuse of discretion and serious error, ruling:

> Certainly there was no reason in the evidence to require that the perpetuation of the relationship of parent and child depend upon the 'expressed desire' of the children. The responsibility for the cultivation of that relationship should rightfully be upon the father, and the mother, not upon the child. **To so place it is to probably destroy it, not protect it.**

331 So. 2d. at 744 (emphasis added).

The *Moore* court could see that to place the responsibility for the perpetuation of the parent/child relationship upon the child would probably destroy that relationship. Similarly, Vivian's attorney could foresee that the teenage discretion provision in this case, as interpreted by Vivian's counsel, and now the trial court, will result in Vivian having de facto primary custody. And importantly, Kirk's relationship with his minor children will probably be destroyed. The district court's order refusing to nullify the provision should be reversed.

The court should be very concerned with how many good parents have had their relationship with their children destroyed by the callous use of a teenage discretion provision in this State. The use of a teenage discretion provision, as interpreted by the trial court, is indefensible.

B. The Trial Court Erred in Interpreting a Teenage Discretion Provision in Favor of the Drafter of the Provision When the Provision is Ambiguous.

Kirk had never seen a teenage discretion provision before and was told it did not provide anything different from what the law otherwise provides. 6A.App.1296. Both of Kirk's trial court attorneys have submitted affidavits that the child can only make a request, which is consistent with what Kirk was told. 6A.App.1212-1213,1295-1297,1292-1293. Vivian's attorneys have sent letters and provided an affidavit setting forth their interpretation of the provision. 5A.App.1033; 6A.App.1215-1216. These

respective understandings are diametrically opposite. Vivian's attorneys assert the ambiguous language means a child can **order** the parent to make weekly modifications to the custody schedule, which the parent must **obey** without discussion.

As noted previously, one of Vivian's attorneys filed an affidavit providing that because of the teenage discretion provision, Vivian "will have de facto primary custody." 5A.App.1033. This statement shows why Vivian's attorneys drafted the provision so ambiguously. No parent would agree to a provision which would empower their minor child to issue them an order which they must obey. No parent would expect there is actually a provision that a parent must obey a child. Kirk was led to believe he had an agreement providing stability and certainty for his minor children – a certain 50/50 bi-weekly schedule. In light of Vivian's history of drug abuse, parental neglect, abuse, and abandonment, Vivian would never have been awarded primary custody. Vivian and her attorneys, however, had a plan for Vivian to obtain de facto primary custody by using the ambiguous teenage discretion provision.

In sharp contrast, Kirk's attorneys have set forth their understanding of the meaning of the language in question as providing the child can make a **request**, which request will be considered by the parents. The parents still have responsibility and authority to act as parents.

Claiming that Kirk somehow "knew" that the teenage discretion provision meant that his child would be empowered to issue him an order, which he must obey, Vivian points to correspondence between counsel. 7A.App.1385. Ironically, in one of those letters Vivian's counsel wrote, "The provision does not place the responsibility of choosing on Brooke, it simply gives each child **discretion** after 14 to spend more time with one parent or the other, a **request** that will likely be granted to them in any event by the Court." *Id.*(emphasis added). Clearly, in this letter,

Vivian's counsel is equating the word "discretion" with the word "request." 7A.App.1420. Nowhere in that correspondence is a statement that teenage discretion means a child is empowered to order her parent and the parent must obey.

For something which is so negative upon the lives of Brooke and Rylee, it was error for the trial court to assume the parties knowingly made an agreement providing the children can order a parent to make adjustments to the weekly custody schedule. Subsection 6.1 was drafted solely by Vivian's attorneys. 6A.App.1295-1296. It provides:

> The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. Rather, the parties **intend to allow the children to feel comfortable** in requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home.

5A.App.939(emphasis added).

The literal language **does not** provide that the child **can order her parent** to make adjustments to the visitation schedule and the parent must **obey** without question or discussion. The language only provides the parties "**intend to allow the children to feel comfortable . . .** in requesting and/or making adjustments to their weekly schedule . . ." Merely memorializing an intention "to allow the children to feel comfortable" is not tantamount to knowingly agreeing that a child can unilaterally modify a visitation schedule. In addition, the drafter's use of the conjunctive disjunctive form – "and/or" – in this context is patently ambiguous. 5A.App.939. It is nonsensical that a child would have the right to "request," but at the same time have the right to "make" her own adjustments to the visitation schedule. In the case of *In re United Scaffolding, Inc.*, 377 S.W. 3d 685 (Tex. 2012) the court found an ambiguity created by the use of "and/or," stating: "Many courts and critics have denounced the use of 'and/or' in legal writing" because it leads to ambiguity and confusion. "**The**

term inherently leads to ambiguity and confusion." *Id.* at 689(emphasis added); see also *State ex rel. Adler v. Douglas*, 95 S.W.2d 1179, 1180 (Mo. 1936)("The use of the symbol 'and/or' . . . should be condemned by every court."). Ambiguity created by "and/or" is made much more significant by the fact that a parent would never expect to see a provision providing that a minor child would be empowered to order the parent to do anything.

This teenage discretion provision is clearly susceptible to more than one interpretation, and it is therefore ambiguous as a matter of law. *Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003)(contract is ambiguous if it is susceptible to more than one interpretation). Because it is ambiguous, it must be construed against the drafter. *Anvui L.L.C. v. G.L. Dragon, L.L.C.*, 123 Nev. 212, 216, 163 P.3d 405, 407 (2007). Vivian's attorneys drafted the ambiguous language. 6A.App.1295-1296. Therefore, the provision must be construed against her.

The trial court's interpretation of the teenage discretion provision is in contravention of NRS 125.460, which provides that it is the policy of Nevada "To encourage such parents to share the rights and responsibilities of child rearing." As interpreted, this teenage discretion provision clearly violates this statute because it has created, in Vivian's mind, a vehicle to pursue competition with Kirk, wherein she has convinced Brooke that she should modify visitation and leave Rylee. This provision not only does not "encourage" parents "to share the rights and responsibilities of child rearing," it does the opposite – it encourages a parent, Vivian, not to share the rights and responsibilities of child rearing.

The trial court's interpretation also violates NRS 125C.010(1)(a), because the right to visitation on a weekly basis is not defined "with sufficient particularity to ensure that the rights of the parties can be properly enforced and that **the best interest of the child is achieved**." (Emphasis added) As interpreted by the trial court, this

teenage discretion provision totally disregards the best interests of Brooke and Rylee. This provision creates uncertainty, emotional issues, disrupts the family, causes inconsistency, needlessly instills fear, and facilitates immersing children in the middle of conflict.

Finally, under *Rivero v. Rivero,* 125 Nev. 410, 216 P.3d 213 (2009), the court will enforce child custody/visitation agreements, provided *they are not unconscionable, illegal or in violation of public policy. Id* at 429, 216 P.3d at 227. The teenage discretion provision here is contrary to the best interests of Brooke and Rylee and therefore a violation of public policy.

This court should reverse the trial court's interpretation that the teenage discretion provision essentially provides that a child can order her parent to make modifications to the weekly custody schedule. The trial court should be instructed to interpret the ambiguous provision against the drafter and therefore interpret the provision to mean a child can request her parent to make modifications to the weekly custody schedule, which the parent can grant or deny. Alternatively, the trial court should be instructed to strike and nullify the teenage discretion provision as contrary to the best interest of the children and contrary to public policy. Finally, this court should rule that any teenage discretion provision which purports, in any way, to empower a minor to order a parent to modify custody is contrary to the best interests of the children involved, against public policy, and therefore void.

C. The Trial Court Erred by Enforcing the Parenting Coordinator Provision.

The parenting coordinator provision has been previously set forth in its entirety at page 9 of this Statement. Other than providing that the parenting coordinator will be hired " **to resolve disputes** between the parties regarding the minor children," no terms whatsoever are set forth. The provision is too indefinite in its terms to be enforceable.

Parents have a fundamental right in the care and custody of their children. *Troxell v. Granville*, 530 U.S. 57, 65-66 (2000). Therefore, the highest level of scrutiny should be given to any contractual provision whereby it is alleged the parents assigned any part of those fundamental rights to a third party.

If the goal of Vivian's attorneys in drafting the parenting coordinator paragraph was to have Kirk agree to have a non-judicial third party make parental determinations concerning his children, as reflected in the trial court's subsequent order appointing a parenting coordinator, then Kirk was entitled to be fully informed in making the decision whether to agree to the provision. Kirk was not.

The provision provides: "The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon by the parties." Provisions such as this are unenforceable. A provision "which leaves an essential term to future agreement is not enforceable." *City of Reno v. Silver State Flying Service,* 84 Nev. 170, 175, 438 P.2d 257, 262 (1968). Here, **all** essential terms are left to future agreement. The provision is not saved by the clause stating that if the parties are unable to agree upon the terms of an order appointing the parenting coordinator, then "the Court shall . . . resolve any disputes regarding the terms of the appointment." 5A.App.938. Parties must know to what they are agreeing with specificity at the time they make the agreement, otherwise the agreement is unenforceable. Without a crystal ball, Kirk would have no way of knowing, at the time the stipulation was signed, what terms the trial court would later decide were appropriate.

In *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) this court held that a settlement agreement is governed by principles of contract law, and "a court cannot compel compliance when material terms remain uncertain."

Additionally, agreements to agree are generally too indefinite to enforce as final agreements. *City of Reno v. Silver State Flying Service,* 84 Nev. 170, 176, 438 P.2d

257, 261 (1968). When a provision, such as the parenting coordinator paragraph, "is too indefinite and uncertain to be regarded as a binding agreement and it amounts to a nullity and is unenforceable." *Id.* at 176, 438 P.2d at 261. Under these circumstances, the trial court must be reversed with instructions to nullify and strike the parenting coordinator paragraph.

Finally, an offer cannot be accepted unless its terms are reasonably certain. "[E]ven though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain." *Rucker v. Taylor*, 828 N.W.2d 595, 602 (Iowa 2013).

Based upon the language in Paragraph 4, it was legally impossible for Kirk to accept the offer contained therein as the terms of the offer were not reasonably certain when the offer was made.

D. No Parent Would Ever Knowingly Agree to The Terms of the Parenting Coordinator's Standard "Agreement for Parent Coordination Services," Which Highlights the Fact that Kirk Never Agreed to Any Of This

On February 20, 2014, Kirk received an email from the office of the parenting coordinator requesting that certain attached agreements be executed, including an Agreement for Parent Coordination Services, a Credit Card Charge Authorization Form, an Authorization for the interviewing of minor children, a Release of Information from the Clark County School District, and an Authorization for the Release of Protected Health Information. 6A.App.1281-1282,1290,1320-1336.

The Agreement for Parent Coordination Services is overreaching, unconscionable, and an unacceptable contract of adhesion. It provides the parent coordinator "with the judicial authority to resolve parent/child and custody/visitation issues." 6A.App.1320. It also provides the parenting coordinator with almost unlimited control and power over the parents' and children's lives **after the divorce is over**:

- "**Direct** as necessary, one or both parents to . . . **psychiatric and/or medical evaluations**, etc. with the Parenting Coordinator to have access to the results of any psychological testing or other assessments of the child and/or parents."
- **Implement** non-substantive changes to, and/or clarify, the shared parenting plan, including choice of **health care providers, child's participation in religious observances and education, Child's appearance, contact with significant others and extended families**, requiring the signing of appropriate releases from each parent to provide **access to confidential and privileged records**, including medical, psychological or **psychiatric records** of a **parent or child**
- **Interview the children** if the parent coordinator deems it necessary
- Parties shall pay the parent coordinator's fees, which include, "**speaking with third parties**, including counselors and other professional providers, **teachers**, and **family members**, as well as others not specifically designated herein"
- If a party challenges a Parenting Coordinator decision and the court determines it is without **"substantial basis**," the party must pay all costs and attorneys' fees
- "***Third Party Consultations***: By signing this Consent, both parties agree that the Parent Coordinator can participate in communication with the court and **with all attorneys involved in the case without either party being present or having notice of such communication**. In addition, each party hereby consents to allow the Parent Coordinator to communicate with **therapists, teachers, physicians**, law enforcement officials, and other professionals who have relevant information about either parent or child, **without either parent being present or receiving notice of such contact**."
- "**Grievances**" If a party files a grievance against the Parenting Coordinator, the party is financially responsible for 100% of the Parenting Coordinator's legal fees to respond to and defend such action

6A.App.1325-1329(emphasis added).

The provision is binding until the youngest child turns 18. 6A.App.1188-90. Divorce attorneys will advocate that a parenting coordinator should be used in "high-conflict" divorce cases. However, Kirk and Vivian had no conflicts regarding custody for almost a year until the "teenage discretion" provision kicked in. 6A.App.1138,1168,1268,1290; 7A.App.1388.

As noted, the parenting coordinator can order a parent to undertake a psychiatric evaluation and have access to the results. This is intimidating leverage. The parents

become slaves to the arbitrary whim of the parenting coordinator. The provisions in the proposed documents do not create a relationship with a mediator, facilitator or problem solver, but rather a potentially adversarial relationship with a non-judicial person with unrestrained arbitrary authority, who is empowered to exercise control in every facet of the parent-child relationship. Kirk never agreed to such terms. 6A.App.1282,1290.

The extreme terms demanded by the parenting coordinator highlight the fact that Kirk never agreed to any of these terms, because none of them were set forth in Paragraph 4. In fact, none of the terms subsequently set forth in the trial court's Order Appointing a Parenting Coordinator were in Paragraph 4. It cannot possibly be argued that Kirk agreed to terms he never saw. This is especially true when those terms are so far beyond any reasonable common sense expectation.

No parent would knowingly agree to give a non-judicial third party such control, intervention and invasion into their children's lives post divorce until their youngest child is 18 years old, which is set forth in this "standard" agreement or in the trial court's order appointing a parenting coordinator. This court should have serious concerns as to why divorcing parents are not presented with a proposed parenting coordinator agreement to review, but rather, only one short paragraph, where the parties "agree" to the appointment of a parenting coordinator, without knowing any of the terms of the appointment, including the judicial powers which will be granted to the parenting coordinator, and then, just like Kirk , get "sucker punched" later. Kirk is presumably not the only party to be told a parenting coordinator was merely a mediator in family court.

The trial court noted: "The connotation of a parenting coordinator arises above a mere mediator in any context that I have ever seen." 7A.App.1520. However, in

Utah, a parenting coordinator is a"mere mediator" in child custody matters. *See* Utah Code Jud. Admin. Rule 4-509. The trial court here went on to state:

> I get the fact that **mediators do resolve disputes**. But the connotation of what a parenting coordinator has been since that term was – came on the scene **here in family court**, is beyond just a mediator.

7A.App.1520-1521 (emphasis added).

First, as noted, Kirk had been retained hundreds of times as a **mediator to resolve disputes**. Second, Kirk had no prior experience "here in family court." Third, when he asked, Kirk was told a parenting coordinator is a mediator, not a decision maker, and that fact is undisputed. 6A.App.1281,1290,1371. Fourth, Kirk thought the appointment of a "mere mediator" was a very good idea. A competent mediator focuses on reaching amicable resolutions, which are in the mutual best interest of the parties and their children. This process would have been relationship building going forward and would have created a positive environment in which this family could heal. 6A.App.1281,1290,1371.

A parenting coordinator provision becomes even more egregious when it is combined with a teenage discretion provision, as in this case. There are heightened opportunities for abuse by a manipulative parent. The trial court acknowledged that teenage discretion provisions are usually ambiguous, and "it becomes an issue of power for the child." 7A.App.1493. If a child exerts this power to modify the weekly schedule and the parent losing the child disagrees, then the parent would be forced to use the parent coordinator to judicially determine the modification to custody. The children would be embroiled in the conflict and parental authority would be undermined.

According to the trial court, teenage discretion provisions are typically just one line, which only provides that the parties agree "the child will have teenage discretion to exercise visitation with the other parent." 7A.App.1491&1493. The trial court

acknowledged that these provisions are ambiguous.[2] 7A.App.1493. Kirk respectfully suggests the reason the one line teenage discretion provision is ambiguous is the same reason the teenage discretion in this matter is ambiguous: the term "teenage discretion" is never defined. However, the teenage discretion provision here is even more ambiguous because of all the language implying and suggesting that the teenager can only make a request.

No responsible parent would knowingly agree to a provision that would empower the parent's 14-year-old child to give the parent orders, which the parent must obey without discussion. Every parent would know that such a provision would not be in the best interest of that child nor in the best interest of that child's younger siblings. Every parent would know that such a provision would severely undermine parental authority. For example, a parent could tell a child she had to clean her room before she went to a friend's house. The child could simply respond by ordering the parent to take them to the other parent's house.

Similarly, no responsible parent would knowingly subject his or her children or themselves to the overly invasive and costly arbitrary authority of a non-judicial person they have never met, as set forth in the trial court's order or the "standard form" agreement of the parenting coordinator, after the divorce is over and until the youngest child is 18 years old.

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[2] Although the trial court acknowledged that these one line "teenage discretion" provisions which provide, "the child shall have teenage discretion to exercise visitation with the other parent" are ambiguous, the trial court had no hesitation enforcing them, despite the fact it is obvious they are not in the best interest of the children and there being a significant question as to whether the parties knew what "teenage discretion" meant. 7A.App.1493.

This court should be very concerned with how many unsuspecting parents, who believed they had ended the instability, uncertainty, and stress for their children by ending the divorce, are presented with a settlement agreement with a one line provision that they are agreeing to teenage discretion, without that term being defined, and a one paragraph provision providing for the appointment of a parenting coordinator to resolve disputes, with the terms to be negotiated later, and being told the teenager can only make a request and the parenting coordinator acts as a mediator. These unsuspecting parents, just like Kirk, only later learn of the chamber of horrors that awaits their children and themselves for many years to come. The children and families of Nevada deserve better.

E. The Court Should Not Grant Judicial Authority to Parenting Coordinators.

Dr. Roitman opined of the important need to stop third party intervention into the family when the divorce is over, opining that "there needs to be minimal third party intermediaries to inject their various values into the family scheme once the asset and custody separation is enacted. Successful families, whether divorced or not, cannot be continuously subjected to the scrutiny of adverse party claims and counter claims without promoting blame and deterioration of the nest-like feeling children need for their own psychological well being. . ." 6A.App.1301.

The appointment of a parenting coordinator creates a readily convenient forum for a manipulative parent who wants to continue the battle after the divorce is over. The draconian one-two punch of a teenage discretion provision and the involvement of a parenting coordinator, both of which create and encourage conflict in which the minor children are embroiled after the divorce is over, is more than most families with minor children can emotionally and financially bear. This is likely why the proposed agreement has a provision which provides the parenting coordinator's fees are "in the

nature of child support payments, and therefore, are not dischargeable in bankruptcy." 6A.App.1327.

In Pennsylvania, the concern over the unconstitutional granting of judicial authority to parenting coordinators led to a modification of Pennsylvania rules, which now state that only judges may make child custody decisions, and "**Any order appointing a parenting coordinator shall be deemed vacated on the date this rule becomes effective.**" Pa. Rule 1915.11-1. 6A.App.1286(emphasis added).

In eliminating parenting coordinators, the Pennsylvania Supreme Court decided to stop the practice of trial courts assigning judicial authority to **non judicial** persons. It was determined it was improper to allow judges to pass on their authority to somebody outside of the judicial due process walls of the courthouse.

The rationale is obvious. A parenting coordinator has a financial incentive to make interpretations which will continue conflict and ensure continued parenting coordinator fees. The majority of courts that have addressed the issue have found that a court may not delegate its judicial power to determine or modify the visitation or custody arrangements of the parties. In *Marriage of Stephens*, 810 N.W.2d 523, 530 fn. 3 (Iowa Ct. App. 2012), the court set forth an extensive list of opinions from appellate courts in different states, all holding that trial courts cannot delegate judicial functions regarding child custody and visitation to third parties, and all condemning such delegations.

In addition to the cases catalogued by the *Marriage of Stephens* court, many other cases are in accord. E.g. *E.A.P. v. J.A.I.*, 421 S.W.3d 460, 464 (Mo. App. 2013) (judgment reversed because it impermissibly delegated judicial authority to parenting coordinator when it gave the parenting coordinator authority to modify the contact schedule); *Edwards v. Rothschild*, 875 N.Y.S.2d 155 (N.Y. App. Div. 2009) (modified order "by deleting the provision thereof authorizing the parenting coordinator to

resolve issues between the parties, since this constitutes an improper delegation of the court's authority to determine issues relating to visitation."); *Hastings v. Rigsbee*, 875 So.2d 772, 777 (Fla. App. 2004) (". . . it is never appropriate for a parenting coordinator to act as a fact-finder or otherwise perform judicial functions. The overreaching problem in this case is that the trial court effectively delegated its judicial authority to the parenting coordinator."); *Bower v. Bournay-Bower*, 15 N.E.3d 745, 747 (Mass. 2014) ("breadth of authority vested in the parent coordinator constitutes an unlawful delegation of authority.").

The extreme terms in the "standard form" agreement presented to Kirk highlights a serious problem with parenting coordinators – there is no uniform definition of that term. In *Butler v. Butler,* 2012 WL 4762105 (Tenn. Ct. App. 2012), the court noted the problem:

> There is no statutory authority for the appointment of a parenting coordinator and, therefore, no description of such a coordinator's duties and authority. This court has expressed its concerns regarding use of "parenting coordinators" where there is no uniform definition of that term, where the express assigned duties involve unauthorized delegation of judicial authority, or where the parties have not expressly agreed to the appointment.

This same problem exists in Nevada. That is why there are agreements like the "standard" agreement, which has so many overreaching terms. For example, the parenting coordinator here requires the parties to agree to undergo a "psychiatric and/or medical evaluation, etc. with the Parenting Coordinator to have access to the results of any psychological testing or other assessments of the child and/or parents." 6A.App.1325. Imagine being a loving and caring parent, but the parenting coordinator does not like something you say and she orders you to undertake a complete psychiatric evaluation for her to review. Or the parenting coordinator lets the parent know in no uncertain terms that she resents the fact that he appealed one of her "recommendations" and if he does it again, he will have to undergo and pay for a

complete psychiatric evaluation for the parenting coordinator to review. 6A.App.1325. All of this is so outrageous. A **court** cannot order a psychiatric testing, except in limited circumstances. *Hastings v. Rigsbee*, 875 So.2d 772, 779 (Fla. App. 2004) (independent psychological evaluation only in limited circumstances: party's condition must be in controversy and good cause must be shown).

In light of the continued overreaching third party intervention by a parenting coordinator year after year, there is a real risk that good parents will not have the financial ability over time to appeal adverse decisions by the parenting coordinator, and ultimately, will be forced to choose between having their children taken away from them, via "de facto primary custody," for example, or risk bankruptcy, if they continue to do what is best for the children. At some point, the loving and caring parent will be forced to stop doing what is best for the children and attempting to protect their parental rights, in order to stave off bankruptcy, so they can continue to provide for the children.

The overwhelming weight of authority is for courts to reject giving judicial authority to parenting coordinators. The families and children of Nevada will avoid a tremendous amount of post-divorce intervention causing emotional damage to the children and financial devastation to the parties, if this court does the same. This court should stop the creation of conflicts in families after the divorce is over, which takes an emotional and financial toll upon the children and their families. If parenting coordinators truly had empathy for the children and parents involved, they would not be appointed to enforce teenage discretion provisions, which foreseeably cause emotional stress to children, undermine parental authority, and cause permanent emotional damage to children. It is untenable that good parents, who have a 50/50 joint bi-weekly agreement, are having their children taken away from them well after the divorce is over, despite doing absolutely nothing wrong.

This court should also be concerned with how many parents, who only have custody of their children every other weekend, are losing all contact with their children because of a one line "teenage discretion" provision and an unrestrained parenting coordinator, who was retained "to resolve disputes." None of this can possibly be acceptable to this court.

When the divorce is over, it needs to be over. No one would want themselves, their adult children, or anyone they care about to be under the thumb of a parenting coordinator until all of their children are 18 years of age. The specter of a divorced couple being saddled with this kind of third party intervention, control over their children's lives and their lives, and the accompanying uncontrollable financial burden for multiple years after the divorce is over is unthinkable.

18. Issues of First Impression. Yes. Whether it should be against public policy to have a provision which provides a child can **order** her parent to make modifications to the weekly custody schedule; whether to delegate judicial authority to a non-judicial individual, violates the due process rights of the parties and is therefore unconstitutional; whether teenage discretion provisions and parenting coordinator provisions should be rejected outright in Nevada.

Dated: 4/8/15

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this fast track statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this fast track statement has been prepared in a proportionally spaced typeface using WordPerfect version X7 in 14 point Times New Roman type style.

2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it is proportionately spaced, has a typeface of 14 points or more, and contains 9,975 words (per court order).

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track statement and the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track statement, or failing to raise material issues or arguments in the fast track statement. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information, and belief.

DATED: 4/8/15

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ATTORNEYS FOR APPELLANT/CROSS-RESPONDENT

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CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date Appellant/Cross-Respondent's Child Custody Fast Track Statement 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 Child Custody Fast Track Statement notice, postage prepaid, by U.S. Mail to:

Kirk Harrison
1535 Sherri Lane
Boulder City, Nevada 89005

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

In addition, I hand filed eight volumes of Appendix with the Nevada Supreme Court and mailed disks containing those eight volumes to:

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DATED: 4/8/15

Vicki Shapiro, Assistant to Robert L. Eisenberg