IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRK ROSS HARRISON,

Appellant,

v.

VIVIAN MARIE LEE HARRISON,

Respondent.

Supreme Court No. 66157
District Court Case No. D-11-443611

CHILD CUSTODY FAST TRACK RESPONSE

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TABLE OF AUTHORITIES

1. **Name of party filing this fast track response:** Vivian Marie Lee Harrison ("Vivian"), Respondent.

2. **Name, law firm, and telephone number of attorney submitting this fast track response:** Radford J. Smith, Esq. of the firm Radford J. Smith, Chartered. Phone number: (702) 990-6448.

3. **Proceedings raising same issues**: None.

4. **STATEMENT OF FACTS:**

A. Facts Leading to the Stipulated Parenting Plan

Appellant Kirk Harrison ("Kirk") and Vivian have five children. Two are minors, daughters Brooke, born June 26, 1999, and Rylee, born January 24, 2003. Vivian was a stay at home mother who raised the three accomplished adult children while Kirk worked long hours in his law practice. (Appellants Appendix ("A.App.") Vol.3, p.435-436; 443-447).

In March 2011, Kirk filed for divorce, but did not inform Vivian. (A.App.3, 653-659). After unsuccessful private mediation of financial issues, in September 2011, Kirk served his Complaint for Divorce and a massive motion to limit Vivian to supervised visitation of Brooke and Rylee.

The girth of Kirk's pleadings filed in the divorce action led to motion practice of unprecedented scope and expense. (*See,* Respondent's Appendix ("R.App." p. 30-39). His first motion for custody filed in September, 2011, was composed of 55 pages of text, and approximately 200 pages of exhibits, including

his affidavits totaling 132 pages, and a 35 page report from a licensed psychiatrist, Dr. Norman Roitman, who diagnosed Vivian "to a reasonable degree of medical certainty" with an *incurable* Narcissistic Personality Disorder ("NPD"). He had never met her nor reviewed her medical records. (App. 1 p. 8-220, 2 p. 221-361). Roitman recommended that Vivian be limited to supervised visitation of Brooke (then age 7) and Rylee (then age 11) even though he never met them or their mother, a gross violation of his standard of care as a psychiatrist. (R.App. 9-12, 93-97).

Roitman's report was based entirely upon Kirk's affidavit, and affidavits Kirk initially prepared for two of the parties' adult children. (A.App. 2 p.222-223). Discovery revealed that Kirk had prepared a 43 page draft of Roitman's report. (R.App. 18-19, 98-109). Roitman failed to note Kirk's draft in his "diagnosis" (A.App. 2 p.222-223), and Kirk later destroyed the draft report. (R.App. p.18-19, 98-109). Kirk had also prepared a draft Motion containing Dr. Roitman's conclusions *before* Dr. Roitman had even issued a report. (R.App. 20, 24)

Roitman's sham "diagnosis" of NPD led to voluminous pleadings and enormous expense. Vivian spent over $540,000.00 in fees and costs during the custody portion addressing Kirk's multitude of claims and motions. (R.App. 131).

That litigation history shaped the terms of the parties' stipulated parenting plan that are the subject of his appeal.

Kirk asserts irrelevant allegations, not facts, in his Procedural Statement of Facts and Procedural History. He failed to prove those allegations, and the district court made no finding consistent with his claims. (R.App. 142-143). Indeed, though he claimed through the sham "diagnosis" that Vivian should be limited to supervised visitation, the district court's initial order granted the parties temporary joint physical custody (R.App. 2), and the parties eventually ***stipulated*** that a final order of joint physical custody was in the best interest of the children. (A.App. 935)

Contrary to Kirk's allegations:

1) None of the doctors that examined or tested Vivian found she suffered from NPD (the core of Kirk's custody case) or any other personality disorder (R.App. 110-119);

2) Kirk's claims of "drug abuse" were proven false by Vivian voluntarily submitting to weekly blood tests for a period of ten months, all of which were negative for any drugs (R.App. 60);

3) Kirk's false claim that Vivian experienced negative side effects from a prescribed weight loss drug was rebutted by the doctor who led studies for the

National Institute of Health regarding the long term effect of the drug (R.App. 60-61), and;

4) Kirk's claims that Vivian "abandoned" the children after 2006 were rebutted by 21 different witness statements from friends, neighbors, coaches, and teachers, who attested to Vivian's long history of involvement, oversight and affection both before and after 2006. (R.App. 110-119)

Kirk's claim that he would have won primary custody below is delusional, and unsupported by any finding or order. He retreated from his request for supervised visitation because his claims were manufactured, proven baseless, and preposterous. He has rehashed those claims in an attempt to have the allegations published as fact in this Court's decision.

The parties stipulated to a comprehensive Parenting Plan. (A.App. 5 p.935). The plan granted each joint legal and physical custody. *Id.* at 935, 938. It included an agreement to appoint a Parenting Coordinator ("PC") and granted the parties' daughters after age 14 a limited right to "from time to time" make adjustments to the regular timeshare in order to spend more time with one of the parents. (A.App. 939-940). The Court issued its Order appointing a PC on May 10, 2013. (A.App.1182).

B. The Teenage Discretion Provision

The negotiation of the "teenage discretion" provision was done primarily in writing. On May 25, 2012, Vivian's counsel sent a proposed parenting plan to Kirk's counsel, Tom Standish, Esq. (A.App.7.p.1398-1442.). In that draft was a provision that read:

> Notwithstanding the foregoing time-share arrangement, the parents agreed that, once each child reaches the age of fourteen (14) years, such child shall have "teenage discretion" with respect to the amount of time the child desires to spend with each parent, with the understanding that the parents will work together to encourage frequent contact and communication between each parent and the child. Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the amount of time the child desires to spend with each parent once that child reaches 14 years of age.

(A.App.7.p.1403) By letter dated May 29, 2012, Mr. Standish set forth Kirk's complaints regarding the structure of that paragraph. (A.App.7.p.1416) Kirk's objections addressed the right of the child to choose a separate custodial structure: "Kirk also believes that it is not in Brooke's best interest to foist the responsibility upon her to choose which parent to live with more than the other parent at a particular point in time." Nothing about that statement suggests any doubt that what Vivian was proposing was to allow the girls to make a choice, not a request.

Vivian clarified her position through counsel on June 1, 2012:

Teenage Discretion: As we have discussed over the last several weeks, part of Vivian's reluctance to enter into a final agreement without the input from Dr. Paglini was based upon what appears to be Brooke's deteriorating relationship with Kirk. Brooke has regularly indicated to Vivian that she desires spend more time with Vivian. Vivian has compromised in large part based upon the desire of the other members of the family to see this matter close. She still has significant concerns about Kirk's relationship with and care of Brooke, but she has listened to the advice that the resolution of the matter would lead to an improvement of that relationship.

What Vivian seeks to avoid by the language of paragraph 6 is the very thing that Kirk fears. At a certain point all Courts begin to place substantial weight on the desire of a teenage child regarding her care – we cannot affect that factor by any agreement. Paragraph 6 contains language designed to avoid litigation regarding this issue if it arises. Based upon what has occurred in litigation to date, this is an extremely important goal.

Moreover, the concerns raised in your letter will be addressed through the system that the agreement puts in place - counseling and a parenting coordinator. Your client will have a year to address the problems in his relationship with Brooke. 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. Again, the provision is designed to avoid litigation.

(A.App.7.p.1420-1421). Mr. Standish responded by letter dated June 7 (A.App.7.p.1424-1425) that reads:

Lastly, Kirk is agreeable to a paragraph allowing teenage discretion, however, I am requesting some revisions. First Kirk proposes that the age for consideration of teenage discretion be **16 years old.**

> Additionally, I propose that the following bolded language be added to Vivian's previously proposed paragraph (page 6 beginning at line 10). It would read as follows:
>
> Thus, while the parents acknowledge the foregoing time-share arrangement, the parents further acknowledge and agree that **absent an objection by the therapist and/or the Parenting Coordinator,** it is in the best interest of each of their minor children to allow each child the right to exercise such "teenage discretion" in determining the amount of time the child desires to spend with each parent once the child reaches 16 years of age. **The subject of teenage discretion may be addressed with the Parenting Coordinator upon the request of either party. Nothing contained in this paragraph is intended to limit the discretion of the District Court in making child custody determinations in this matter.**

[Emphasis in original]. By that correspondence, Kirk specifically and unequivocally offered to grant the children the right to "exercise such 'teenage discretion' in determining the amount of time the child desires to spend with each parent" at 16. That sentence belies Kirk's contentions that he did not understand that the teenage discretion was anything more than a request, or that he did not understand the provision. Also, it is unlikely that Kirk had no hand in writing that correspondence since he wrote the initial draft of every motion his lawyers filed in the case. (R.App. 13, 89-92)

Acknowledging Kirk's concerns, Vivian's counsel redrafted the teenage discretion provision and sent the revised Parenting Plan to Mr. Standish on June 15, 2012. Paragraph 6 (A.App. 7 p.1386) continued to grant discretion to the

children at 14, but: 1) prohibited the children from altering custody through teenage discretion; 2) prohibited either parent from encouraging a child to exercise teenage discretion (subparagraph 6.2); 3) added safeguards for review of the exercise of the "teenage discretion" through the PC or the Court (subparagraph 6.3); and, 4) permitted the children to speak to the PC regarding their desire to modify custody, but limited the determination of any custodial change to the court. What the revised paragraph did *not* do was change the right of the teenage children to exercise discretion - that material element of the agreement was consistent throughout all of the proposals associated with paragraph 6, including Kirk's. Mr. Standish's responded to the June 20, 2012 draft by email dated July 3, 2012 that made no request for a modification of the revised paragraph 6. (A.App. 7.p.1427).

The sentence in paragraph 6.1, "[T]he 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" (A.App.5.p.939) permits the teenage children to request adjustments, make adjustments, or both. The remainder of the language in paragraph 6 would be entirely unnecessary if paragraph 6.1 was interpreted to only allow the child to ***request*** a modification.

If the teenager had only the right to request a change, and a parent had the right to deny that request, there would be no reason to include the sentence (found in paragraph 6.2) "If either party feels that his or her time is being unduly eroded by this provision as an attempt by the other parent to minimize that parent's custodial time, he or she may address this issue with the Parenting Coordinator and/or the Court." (A.App.5.p.939). A parent's time could not be eroded by a request the parent could veto. A parent would have no need to "address this issue to the Parenting Coordinator and/or the Court." Most telling, neither Kirk nor his lawyers ever expressed any doubt or objection to the effect of that language, and on the contrary, when Mr. Standish set forth Kirk's view, he granted the children the discretion to modify the parenting schedule, albeit at age 16.

C. The Order Appointing a Parenting Coordinator

The parties agreed to the use of a Parenting Coordinator ("PC'). (A.App.5.p.935). The Parenting Plan specifically allowed the court to resolve any differences of the parties in proposed orders of appointment. (*Id.* 935) Consistent with those terms, the parties each submitted draft orders from which the Court based its final order. (A.App.5.p.960-972;1007-1012).

The PC Order grants no judicial power to the PC. The Order outlines a plan of mediation and non-binding recommendations on "non-substantive" issues

subject to judicial review. The PC has no power to enter orders, or even address issues affecting custody. (A.App.6.p.1182-1190).

5. ISSUES ON APPEAL

A. Whether the district court's denial of Kirk's repeated motions to modify the Parenting Plan were supported by substantial evidence, and not clearly erroneous.

B. Whether a district court may approve and enter a stipulation by parents granting their teenage children limited discretion to modify their normal timeshare to avoid further litigation regarding minor visitation issues.

C. Whether the district court's PC Order exceeded its discretion regarding the appointment of a PC.

C. LEGAL ARGUMENT

A. The Record Contains Substantial Evidence Supporting the Court's Denial of Kirk's Motions to Modify or Eliminate the Agreed Teenage Discretion:

Kirk filed a series of motions seeking to modify the stipulated terms of the Parenting Plan. A district court retains jurisdiction throughout a child's minority "[a]t any time to modify or vacate its order" pertaining to custody. NRS 125.510(1). District courts have broad discretion in child custody matters, but substantial evidence must support the court's findings. *Ellis v. Carucci*, 123 Nev.

145, 149, 161 P.3d 239, 241-242 (2007). Substantial evidence "is evidence that a reasonable person may accept as adequate to sustain a judgment." *Id.* at 149, 161 P.3d at 242.

A district court must give deference to the custody agreements entered by the parties when presented a motion to modify custody unless the agreements are unconscionable, illegal, or in violation of public policy. *Rivero v. Rivero,* 125 Nev. 410, 429-430, 216 P.2d 213, 226 (2009). That deference to parents' custody agreements arises from the fundamental notion parents act in the best interests of their children. *Troxel v. Granville,* 530 U.S. 57, 68 (2009). Nevada law adopts that notion in NRS 125.490 by its presumption, "that joint custody would be in the best interest of a minor child if the parents have agreed to an award of joint custody[.]" Here, the parties expressly agreed that the teenage discretion provision was in the best interest of their children. (App. 5 p. 939, lines 11-14).

A settlement of pending litigation is a contract, and is subject to general principles of contract law. *Grisham v. Grisham,* 128 Nev. Adv. Rep 60, 289 P.3d 230 (2012). If there is no ambiguity, there is no need for interpretation. Extrinsic or parol evidence is not admissible to contradict or vary the terms of an unambiguous written instrument, "since all prior negotiations and agreements are deemed to have been merged therein." *Kaldi v. Farmers Insurance Exchange*, 117

Nev. 273, 281 (2001) (quoting *Daly v. Del E. Webb Corp.*, 96 Nev. 359, 361, 609 P.2d 319, 320 (1980)).

Here, the agreement is not ambiguous. Paragraph 6.1 of the parenting plan reads: "[T]he 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 part or at either parent's home." [Emphasis supplied]. Under that provision a child may request an adjustment, make an adjustment, or both. (A.App.5.p.939)

Kirk claimed below that using the construction "and/or" in paragraph 6 is "patently ambiguous" and that "all of the authorities agree." (FTS.p.18). Apparently not all authorities agree – this Court has used, and continues to use, that construction in its decisions. *See, e.g., Wingo v. Government Employees Insurance Co.,* 130 Nev. Adv. Rep. 20, 321 P.3d 855, n.2 (2014)("The district court dismissed based on Geico's alternative argument that, under *Allstate Insurance Co. v. Thorpe*, 123 Nev. 565, 170 P.3d 989 (2007), Wingco did not have a private right of action **and/or** that primary jurisdiction over the dispute lay with the Nevada Department of Insurance."); *Huckaby Properties, Inc. v. NC Autoparts, LLC,* 130 Nev. Adv. Rep. 23 (2014)("[W]e conclude that the factual nature of an

underlying case is not an appropriate measure to evaluate whether an appeal should be dismissed for violations of court rules **and/or** orders.").

The case Kirk cites for his claim that "and/or" is always ambiguous, addresses factors not present here. *In re United Scaffolding, Inc.*, 377 S.W. 3d 685 (Tex. 2012) involved a grant of a new trial where one factor addressed by the and/or phrase constituted was not a basis for new trial. *Id.* at 689-690. There is no such legal impediment in the Parenting Plan.

The other authority, *Adler v. Douglas,* 95 S.W.2d 1179 (Mo. 1936), contains the antiquated view of the phrase "and/or" that modern scholars have questioned. *See,* Kenneth A. Adams and Alan S. Kaye *Revisiting the Ambiguity of "and" and "or" in Legal Drafting".* 80 St. John's Law Review 1167, 1191 (2006) ("Judges and legal-writing commentators have fulminated against use of and/or, but it has gained greater acceptance among general authorities.")

Kirk argued below that paragraph 6 of the Parenting Plan allows the children "unfettered" right to modify the Court's order. On the contrary, using the teenage discretion is limited to "weekly visitation," and is to be only exercised "from time to time." Parenting plan, ¶6.1. Judge Duckworth correctly held that the provisions specifically prohibit the child from using discretion to permanently alter the custody (A.App. 8 p. 1659,). Further, the provisions grant the remedy of

intervention by the PC or the court if either party believes a child used the teenage discretion provision to "unduly erode" the timeshare of either party. (A.App. 5 p. 939). The provisions distinguish between modifications "from time to time" and the intent or desire of the child to change custody. Paragraph 6.4 of the Parenting Plan reads:

> In the event either child wishes to permanently modify the regular custodial schedule beyond the scope of this provision once that child reaches 14 years of age, she may address this matter with the therapist or Parenting Coordinator, or either party may address this issue with the Parenting Coordinator. If the parties cannot agree, the Court shall consider the children's wishes pursuant to NRS 125.480(4)(a).

(*Id.* at 940). Paragraph 6.4 reveals that the parties intended to allow discretion to a point, but not allow the child to dictate her schedule with the other parent. The district court agreed. (A.App.25.p.1436). If either Brooke or Rylee desires to change custody, paragraph 6 ensures that they will receive counseling through the therapist or parenting coordinator to avoid rash or emotional decisions. The plan also affords the parties a non-judicial means for addressing any dispute regarding a child's desire to change custody, an important factor in light of Kirk's litigation tactics, and the enormous amount of fees expended to combat them.

Citing NRS 125.460, Kirk argues the "teenage discretion" provision violates public policy. Kirk ignores, however, the mandatory "best interest" factors

codified in NRS 125.480. Those factors include "the wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his or her custody" and the "physical, developmental and emotional needs of the child." The analysis cannot be accomplished unless a district court recognizes the age of a child, and the effect of a child's desire to spend more time with one parent on the child's emotional wellbeing. Nevada public policy requires that a district court weigh the preference of an intelligent child in determining a child's best interest, and the scale upon which that weight is measured is her emotional and developmental well-being.

The recognition of the importance of giving teenage children a voice in their custody is universal. *See*, analysis of factors under each states law published in the *Family Law Quarterly,* Volume 46, Number 4, Winter 2013, pages 525-527 (every state except Massachusetts recognize the "child's wishes" as a factor in determining custody).

Psychological studies strongly support the grant of a voice to teens. In 2008, the American Bar Association published the second edition of, "A Judge's Guide: Making Child-Centered Decisions in Custody Cases."[1] That guideline constitutes

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[1] The guideline is a joint project of the ABA Child Custody and Adoption Pro Bono Project and the ABA Center on Children and the Law. The Guide (299 pages) is found at: http://apps.americanbar.org/legalservices/probono/childcustody/judges_guide.pdf.

a comprehensive overview of literature underlying issues surrounding the judicial administration and review of child custody cases. The guide is structured by separate analyses of the developmental ages of children. One of the developmental periods in the guide is adolescents between the ages of 14 and 18 (pages 73-78). That section addresses the importance of permitting the adolescent to be part of determining custody.

The "teenage discretion" provision here worked as intended. The district court found that Brooke had not abused her discretion. (A.App. 1659). That finding was supported by substantial evidence. (A.App. 1056-1124, 1226-1239, 1341-1367)

With Kirk's third motion, he submitted a report from Dr. Roitman that he relies upon heavily in his appeal. The district court specifically addressed the report, and dismissed it because Dr. Roitman has never met Vivian or the parties' children. (A.App. 8 p.1671-1672) In light of Dr. Roitman's and Kirk's unethical conduct in jointly preparing a "diagnosis" of Vivian and a custody recommendation, and Kirk's unlawful destruction of the draft report he prepared arguably as a script for Dr. Roitman, the Court's dismissal of Dr. Roitman's opinion was reasonable.

B. The Court Properly Exercised Its Discretion To Appoint A Parenting Coordinator

The parties granted discretion to the district court (under paragraph 4 of the Parenting Plan) to resolve any disputes between the parties regarding either the parenting coordinator, or the terms under which the parenting coordinator would serve. (A.App. 38)

Kirk argues that the PC Order is an unconstitutional grant of power to the Parenting Coordinator, and is a violation of Kirk's right of due process. He suggests that other states have restricted or eliminated parenting coordination, and this Court, and the State of Nevada should do so.

In section D of Kirk's FTS, he cites language from a proposed agreement from the appointed PC. The district court properly ruled that the PC's retainer agreement must be consistent with the PC Order (A.App. 7 p.1437). The terms of the PC's proposed retainer have no bearing on the validity of the PC order.

In section E of his FTS, Kirk cites numerous cases from various jurisdictions for the proposition that a court may not delegate its judicial authority. The PC Order here, however, does not grant the PC any authority other than mediating and making recommendation on "non-substantive issues." The Order prohibits the PC from making *any* recommendation regarding significant changes in the shared parenting plan, or any change of custody. (A.App. 6 p.1183).

Kirk argues that he did not approve the terms of the PC Order, and therefore the provision in parenting plan was a contract to agree. Kirk and Vivian approved the district courts discretion to enter a PC Order, a power the district court already retains.

An agreed upon appointment of a PC limited to mediation and non-binding recommendations is a proper exercise of a court's discretion under NRCP 53. In *Jordan v. Jordan,* 14 A.3d 1136 (D.C. App. 2011), the court addressed and affirmed the power of a trial court to appoint a parenting coordinator in high conflict cases under the District of Columbia's nearly identical Rule 53. In *Jordan,* the Court addressed the increasing use and approval of parenting coordinators by courts in various states:

> We begin by providing context for the trial court's appointment of a parenting coordinator in this case. In the past decade, the use of parenting coordinators in high-conflict custody cases has become increasingly common. Parenting coordinators simplify the litigation process in highly contentious parenting situations by helping parents to reduce conflict, while decreasing their reliance on the intervention of the courts. *See* Dana E. Prescott, *When Co-Parenting Falters: Parenting Coordinators, Parents-in-Conflict, and the Delegation of Judicial Authority, 20 Maine Bar J. 240, 240 (Fall 2005)*; *see also* Christine Coates, *et al., Parenting Coordination for High-Conflict Families, 42 Fam. Ct. Rev. 246 (April 2004).* Because interparental conflict is "the major source of detriment to children of divorce," and "most [parental disputes in the divorce context are] minor . . . such as one-time changes in [matters like] telephone access [. . . and] after-school activities," the availability of a parenting coordinator to minimize day-to-day disagreements is in the best interests of the

> children. *See Coates, supra, at 246-47.* We are aware of 30 jurisdictions, in 27 states, that permit the appointment of parenting coordinators pursuant to a statute or court rule. In addition, we are aware of nine other jurisdictions where courts have referred to the use of parenting coordinators in opinions, but did not specifically cite the authority relied upon to appoint a parenting coordinator.

Id. at 1153-1154.

The *Jordan* court found that its order granting the right to the parenting coordinator to address "day to day" decisions was not an unconstitutional grant of authority by the court. *Id.* at 1157. The *Jordan* court further noted that the district court's citation to Rule 53 absent a rule or statute appointing a parenting coordinator followed the course of many courts around the country. *Id.* at 1158.

Kirk argues that the appointment of the parenting coordinator violates his due process rights. The *Jordan* case contradicts him:

> The use of a parenting coordinator under the circumstances presented does not unduly impinge upon Ms. Jordan's "fundamental liberty interest . . . in the care, custody, and management of [her] child[ren]." Ms. Jordan's liberty interest must be reconciled both with Mr. Jordan's liberty interest regarding the children, and with the principle that "a biological parent's liberty interest is not absolute, and must give way before the child's best interest." Although the parenting coordinator may sometimes supersede Ms. Jordan's authority to make decisions regarding her children, the parenting coordinator may exercise that power only in limited circumstances, *i.e.*, where Ms. Jordan has a dispute with Mr. Jordan, who also has a liberty interest in making decisions for the children; and where the dispute concerns only a day-to-day issue.

> In any event, even assuming that a fundamental liberty interest is implicated, that interest is adequately protected by the procedures available to a parent aggrieved by any decision made by the parenting coordinator.

Jordan, 14 A.3d 1159-1160 (citations and footnotes omitted). *See also, Barnes v. Barnes,* 107 P.3d 560, 565 (Okla. 2005) (holding that appointment of parenting coordinator did not violate procedural due process, and that "[t]he extent to which a parent may be inconvenienced by cooperating with a parenting coordinator is subordinate to the need to protect the child's welfare").

The PC Order contains substantial procedural safeguards for the parties to challenge any recommendation of the PC. Here, the parties agreed to a procedure that was designed to allow a cost-effective way to address and resolve the myriad of issues Kirk has and continues to raise regarding Vivian's care of the children. Ironically, Kirk's delay in naming a proposed mediator for 14 months (A.App.24.p.1388), his multitude of repetitive motions, for which he was sanctioned $5000.00 (A.App.26.p.1440), and his appeals of even stipulated orders has prevented Vivian from receiving any benefit from the plan the parties spent so much time and effort to reach. The district court recognized that fact, and directed the parties to implement the agreed plan. (A.App.26.p.1436).

VERIFICATION

1. I hereby certify that this fast track response 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 response has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Font Size 14, in Times New Roman;

2. I further certify that this fast track response complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is proportionately spaced, has a typeface of 14 points or more, and contains 4657 words;

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this 5 day of May, 2015.

RADFORD J. SMITH, CHARTERED

RADFORD J. SMITH, ESQ.
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CERTIFICATE OF SERVICE

I certify that I am an employee of Radford J. Smith, Chartered and that on this date Respondent's Child Custody Fast Track Response and Respondent's Appendix were 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:

Robert Eisenberg
Thomas J. Standish
Gary R. Silverman
Edward L. Kainen
Mary Anne Decaria
Kirk Harrison

5/5/15

Kenneth F. Smith
Employee of Radford J. Smith, Chartered