

IN THE SUPREME COURT OF THE STATE OF NEVADA

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KIRK ROSS HARRISON,

Appellant/Cross-
Respondent

vs.

VIVIAN MARIE LEE HARRISON,

Respondent/Cross-
Appellant.

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Tracie K. Lindeman
Clerk of Supreme Court
NO. 66157

**REPLY IN SUPPORT OF MOTION FOR PERMISSION TO FILE REPLY
TO FAST TRACK RESPONSE, AND TO FILE SUPPLEMENTAL
APPENDIX**

Appellant, Kirk Ross Harrison (Kirk), hereby files this reply in support of his Motion for Permission to File Reply to Fast Track Response and to File Supplemental Appendix.

I. Introduction

As Kirk explained in his motion, Dr. Roitman prepared two reports. The only one mentioned in Kirk's fast track statement was dated January 14, 2014. 6A.App.1299-1311. Vivian's response, however, vigorously attacked another earlier report, which was dated June 9, 2011. 2A.App.222-257. Vivian's fast track response contained specific alleged facts regarding the preparation of the June 9, 2011 report, with extensive attacks on the report (e.g., Response, pp. 1-2), even going so far as arguing that Dr. Roitman and Kirk engaged in "unethical conduct" regarding preparation of the report. (Response, p. 16)

Kirk's fast track statement never mentioned or discussed Dr. Roitman's report of June 9, 2011. Consequently, this court's record is incomplete regarding that report. In light of Vivian's attack on that report in her fast track response, and in light

of new documents that Vivian submitted in a Respondent's Appendix, Kirk's motion for permission to file a reply justifiably contended that this court should have all of the facts regarding preparation of the June 9, 2011 report. The motion also argued that fundamental fairness dictates that Kirk should be able to reply to Vivian's attacks on the June 9, 2011 report, because that report was never discussed in Kirk's fast track statement.

Vivian's opposition confuses and conflates her arguments regarding the two reports. The opposition barely mentions the June 9, 2011 report. And the opposition provides no plausible argument or explanation as to why Vivian's attack on the June 9, 2011 report in her fast track response is in any way relevant to her discussion of the other report rendered by Dr. Roitman more than two years later—which is the only one discussed in Kirk's fast track statement.

II. Argument

Vivian's Claimed Justification for Her Baseless Attack Upon the June 9, 2011 Report, Dr. Roitman, and Kirk is Simply Not True

Vivian's claimed justification for the irrelevant and baseless attack upon Dr. Roitman and Kirk in the fast track response was to address, according to Vivian, "why the district court was inclined to ignore that report, and gave it little or no credence." Opp. p. 2:17-18.

This assertion is false and contrary to the trial court record. Contrary to this assertion, the baseless allegations against Dr. Roitman and Kirk regarding the June 9, 2011 report had absolutely nothing to do with the trial court's desire to strike the January 14, 2014 report. The trial court made it very clear it was the filing of "*unilateral* reports submitted by *both parties*" that motivated the trial court to initially strike the January 14, 2014 report. The trial court's order for the May 21, 2014 hearing unequivocally provides:

The issue of expert reports attached to papers filed in this case has been prominent throughout the history of this case. As this Court reviewed and prepared its decision regarding the issue of attorneys' fees and costs associated with Mother's Motion for Attorney's Fees and Sanctions (Apr. 3, 2013), the heightened conflict generated by the *unilateral* reports submitted by *both parties* was evident. Indeed, the parties would have benefitted (and the conflict perhaps would have been ratcheted down) from this Court striking every report submitted by both parties at the moment each report was introduced into the record. The existence of these *unilateral* reports submitted for the purpose of influencing custody determinations without the necessary involvement or input of the other party has engendered unnecessary angst, anxiety, and litigation in this matter.

7A.App.1437-1438 (emphasis in original).¹

Based on the foregoing, there clearly was no justification for the attack upon Dr. Roitman and Kirk regarding the June 9, 2011 report. The attack should be seen for what it is – a false character assassination of Dr. Roitman and Kirk made in an obvious attempt to distract the court from the important issues before it.

In addition, Kirk's proposed fast track reply should be allowed because the reason Vivian claims the trial court initially struck Dr. Roitman's January 14, 2014 report appears to be ever changing. In Vivian's fast track response, Vivian claimed the reason the trial court "dismissed" Dr. Roitman's January 14, 2014 report was "because Dr. Roitman has never met Vivian or the parties' children" citing (A.App. 8 p. 1671-1672). Response, p. 16. However, when those pages of the appendix are examined it is learned those pages are the same pages as 7A.App.1437-1438, cited above. Upon inspection of those two pages, it is readily apparent there is nothing on those two pages to support the assertion that the report was dismissed "because Dr. Roitman has never met Vivian or the parties' children." And, obviously, it confirms that Vivian knew the real and stated reason the trial court initially struck the January 14, 2014 report when she made the false claim in the fast track response and the false

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Vivian submitted five such unilateral reports. Prior to the submission of the January 14, 2014 report, Kirk had only submitted one such unilateral report.

claim she just made in her opposition to the present motion.

The only reference to Dr. Roitman's January 14, 2014 report in Vivian's fast track response is the brief reference on page 16, which fails to address any of the opinions contained in that report. Rather, the focus is upon the June 9, 2011 report, which was neither mentioned or discussed in Kirk's fast track statement.

Vivian's opposition to the present motion continues with her baseless accusations, arguing that Kirk made a "presentation of the initial 'diagnosis' of Dr. Roitman." Opp. p. 3. Kirk never made a "diagnosis" to Dr. Roitman or anyone else.²

Vivian's opposition contends that it was improper for Dr. Roitman to render the January 14, 2014 report without meeting the children or speaking to Vivian, and that the district court did not request the report. Opp. p. 2. Dr. Roitman was requested to render an opinion regarding the teenage discretion provision in this case assuming it was interpreted by the trial court as empowering a 14 year old child to order her parent to make modifications to an agreed to custody schedule. The rendering of such an opinion did not require interviewing the children or Vivian. The fact that the trial court did not request the report is irrelevant and in no way diminishes the importance of the considered opinions rendered therein.

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Vivian's opposition to the present motion contends that the court should reject Kirk's proposed supplemental appendix documents because they deal with attorneys' fees, and the attorneys' fee issue is the subject of another appeal docket. Opp. p. 2. Kirk is not submitting the proposed supplemental appendix documents for purposes of the attorneys' fee issue. These documents happen to be the best district court documents containing relevant information regarding the preparation of Dr. Roitman's June 9, 2011 report. This is the issue raised in Vivian's fast track response, and this is the issue on which the proposed supplemental appendix documents are being submitted to this court.

III. Conclusion

Vivian concludes her opposition by stating, “Vivian believes that the briefs fully frame the issues. . .” Opp. p. 4. In her fast track response, Vivian falsely attacks the character of Dr. Roitman and Kirk regarding a report from June of 2011 that was never mentioned or discussed in Kirk’s fast track brief, and Vivian’s Respondent’s Appendix adds additional documents to the appendix in support of that false attack. Vivian now strains mightily to prevent this court from receiving the benefit of a response to that ambush, including adding documents to the appendix which will likely be outcome determinative of this issue. This court should base its decision on all the facts and district court pleadings on the new issue Vivian raised in her fast track response, not just the one-sided version in Vivian’s fast track response and her appendix. Accordingly, Kirk’s motion to file a reply should be granted.

Dated: May 15, 2015

Robert L. Eisenberg
ROBERT L. EISENBERG (Bar #0950)
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Phone: 775-786-6868
Email: rle@lge.net
ATTORNEYS FOR APPELLANT/CROSS-RESPONDENT

SEE NEXT PAGE
KIRK R. HARRISON (Bar #0861)
1535 Sherri Lane
Boulder City, Nevada 89005
Phone: (702) 271-6000
Email: kharrison@harrisonresolution.com
APPELLANT/CROSS-RESPONDENT

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ROBERT L. EISENBERG (Bar #0950)
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Phone: 775-786-6868
Email: rle@lge.net
ATTORNEYS FOR APPELLANT/CROSS-RESPONDENT

Kirk R. Harrison
KIRK R. HARRISON (Bar #0861)
1535 Sherri Lane
Boulder City, Nevada 89005
Phone: (702) 271-6000
Email: kharrison@harrisonresolution.com
APPELLANT/CROSS-RESPONDENT

CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date Appellant/Cross-Respondent's Reply in Support of Motion for Permission to File Reply to Fast Track Response and to File Supplemental Appendix 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
Kirk Harrison

DATED: 5/15/15

Margie Flinn