

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

KIRK ROSS HARRISON,

Appellant/Cross-
Respondent

vs.

VIVIAN MARIE LEE HARRISON,

Respondent/Cross-
Appellant.

Electronically Filed
Jun 22 2015 09:20 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
NO. 66157

_____/

REPLY TO FAST TRACK RESPONSE

I. Introduction

It is apparent from Vivian's response that she has no real defense to the perpetration of teenage discretion provisions upon unsuspecting parents in this state. There are no legal authorities or psychiatrist opinions to justify empowering a 14 year old child to order her parent to make changes to a custody schedule. The tactic of having unsuspecting parents agree to a parenting coordinator "to resolve disputes" with all terms to be negotiated later is similarly indefensible.

Vivian has chosen, instead, to baselessly attack the credibility of both Kirk and Dr. Norton Roitman, to distract this court from the significant policy issues before it regarding teenage discretion provisions and the utilization of judicially empowered parenting coordinators after the divorce is over. This unjustified attack deals with Dr. Roitman's report in connection with Kirk's motion for primary physical custody. It is not in connection with Dr. Roitman's report regarding the teenage discretion

provision and the devastating adverse impacts such a provision has upon minor children.¹

II. Kirk Never Prepared a Draft of Dr. Roitman's Report, Nor Did Kirk Originate or Draft the Analysis and Opinions Contained in that Report; and it was Not Improper for Dr. Roitman to Express Opinions Without Interviewing Vivian.

Vivian's response asserts: "Discovery revealed that Kirk had prepared a 43 page draft of Roitman's report," for the purpose of falsely leading this court to believe that Kirk actually originated and drafted the analysis and opinions contained in Dr. Roitman's report. Response, p. 2. Upon this erroneous assertion, Vivian describes Dr. Roitman's report as a "sham 'diagnosis.'" *Id.* The truth is that Dr. Roitman originated and drafted 100% of the analysis and opinions in that report. 9A.App.1678-1679;1693-1695.

Two different people, including Gard Jameson, a leader in the child advocacy effort in Southern Nevada, referred Kirk to Dr. Roitman as the best psychiatrist in Southern Nevada. 4A.App.751-752;9A.App.1711. Kirk never met Dr. Roitman prior to this matter. 9A.App.1716. Vivian's assertion that Kirk originated any of Dr. Roitman's psychiatric opinions is illogical. Dr. Roitman, one of the most respected psychiatrists in this State, would not let anyone, including a lay person, who he met for the first time in connection with this case, whom he had no contact with except in connection with this matter, tell him what his professional opinions were going to be in this case. *Id.*

¹

Dr. Roitman prepared two reports. The only one mentioned in Kirk's fast track statement was dated January 14, 2014. 6A.App.1299-1311. The report attacked in Vivian's response, which was never mentioned in Kirk's fast track statement, was dated June 9, 2011. 2A.App.222-257. Unless otherwise indicated, the report to which this reply refers is the report dated June 9, 2011, which is the one attacked in Vivian's response, but which was never discussed in Kirk's fast track statement.

Kirk had been advised that in the event he was unable to settle custody, it was important to be the moving party for temporary custody. 9A.App.1712. Kirk became concerned that Vivian's attorney was not genuinely interested in settling the case, and was possibly preparing a motion for Vivian to obtain custody. *Id.* Kirk therefore prepared a motion for temporary custody. *Id.*

When Kirk asked Dr. Roitman when he could provide an expert report, Dr. Roitman was pessimistic in light of his existing commitments. 9A.App.1712. Kirk asked Dr. Roitman if there was anything he could do to assist Dr. Roitman to facilitate Dr. Roitman's preparation of the report. *Id.* Dr. Roitman replied that since Kirk already had the affidavits, if Kirk could make the initial pass to simply resort the paragraphs under the DSM-IV nine criteria, that would save considerable time for Dr. Roitman, who would then review and revise the data. *Id.*

Under the guidance of Dr. Roitman, Kirk performed the clerical function of **resorting** the paragraphs in his affidavit and the affidavits of the parties' then 26 and 24 year old daughters. 9A.App.1693-1695. Dr. Roitman then reviewed and revised each of the paragraphs and noted Kirk was only about 70% accurate in his effort. 9A.App.1694;1712-1713. Kirk performed the clerical function of **typing** excerpts from treatises written by experts in Narcissistic Personality Disorder, most of whom were referred to Kirk by Dr. Roitman and discussed between Kirk and Dr. Roitman, for Dr. Roitman's consideration. 9A.App.1694,1712-1713,1718. Based upon the opinions Dr. Roitman had provided to Kirk, beginning when Kirk first sat down with Dr. Roitman on January 15, 2010 and continuing through May of 2011, and using a format construction and engineering experts had used, Kirk prepared a proposed outline for Dr. Roitman's consideration. Dr. Roitman rejected the proposed outline in total. 9A.App.1713-1715.

Kirk did not originate, write, draft, or prepare any of Dr. Roitman's opinions in this matter. Kirk, also, did not originate, write, draft, or prepare any of Dr. Roitman's analyses in this matter. 9A.App.1693-1695. Accordingly, the court should reject the arguments in Vivian's response unjustifiably attacking Dr. Roitman and Kirk on this point.

Vivian's response also attacks Dr. Roitman for rendering an opinion without having personally interviewed Vivian or the two minor children. Response, p. 2. The response contends that this was "a gross violation of his standard of care as a psychiatrist." *Id.* The record belies Vivian's contention, as established by one of Vivian's own experts, Professor Thienaus. He referred to ethical guidelines established by the American Association for Psychiatry and the Law, which expressly allow a psychiatrist to issue opinions regarding a person's mental status without conducting a personal examination; such an opinion may be "rendered on the basis of other information." 9A.App.729.

III. Dr. Roitman's Report was Based Upon Significantly More Reliable and Extensive Information than the Expert Reports Offered by Vivian's Experts.

In addition to Vivian's false argument that Kirk drafted Dr. Roitman's report, Vivian's response also contends that Dr. Roitman was unethical—or that his methodology was a violation of his standard of care as a psychiatrist, and his report was a "sham"—because Kirk was the doctor's only source of information. Response p. 2. This additional argument is also baseless.

A. Dr. Roitman's Opinion Was Based Upon Critically Important, Extensive, Detailed, and Reliable Collateral Source Information

In his report, Dr. Roitman noted that collateral sources of information are critical to know the subject's behaviors and thought processes over time. 2A.App.222. Dr. Roitman emphasized the importance of collateral source information during his deposition:

In the case of a personality disorder the collateral history is critical, because the person with the personality disorder has a certain blindness to themselves. They can't appreciate the context in which they're operating. Personality disorders have to be gauged based on long-term patterns of functioning first manifested at an early age. And so **collateral history** is one of the essential ingredients in a valid examination.

9A.App.1715 (emphasis added).

Dr. Roitman received Kirk's 38-page single spaced summary regarding Vivian in January of 2010. 4A.App.755-792. At that time Kirk was dedicated to the marriage and wanted to have a good relationship back with Vivian. 5A.App.1129. Dr. Roitman advised Kirk to read various treatises. 9A.App.1713. Kirk read those treatises and many more, and called Dr. Roitman asking questions about the treatises he was reading. 4A.App.677;9A.App.1711-1713.

In addition, Dr. Roitman received the extensive affidavits of the parties' adult daughters, who were eye witnesses to Vivian's behavior and were justifiably concerned about the negative impacts upon their younger sisters. 1A.App.181-207. This collateral history was, therefore, also very reliable. Kirk's affidavit contained essentially the same detailed information that was in the 38-page summary, plus detailed information concerning Vivian's behavior after the date of the submission of the summary. 4A.App.728. Most of the additional information corroborated the information contained in the adult daughters' affidavits. Therefore, these affidavits were also highly reliable collateral history. Dr. Roitman appropriately noted in his report: "The opinions rendered are preliminary and subject to change based upon a psychiatric examination of Vivian L. Harrison." 2A.App.222. The credibility of Dr. Roitman's report can best be judged by comparison to the three expert reports upon which Vivian relied.

B. The Report of Each of Vivian's Three Experts was Based Only Upon What Vivian Told Them In Very Brief Interviews.

It is apparent that Vivian did not go to Doctors Applebaum, Ronningstam and Thienhaus to seek therapy, but rather, for opinions to be used in court. As a consequence, there are significant differences as to what is portrayed in these doctors' reports and what was confirmed by Vivian to her treating physicians, reflected in the physicians' notes, when she was actually seeking help. 9A.App.1681.

In sharp contrast to Dr. Roitman's report—which was based upon the affidavits of the adult daughters and Kirk's affidavit, which corroborated the daughters' affidavits—the evaluation of Vivian by each of her own three experts was based **only** upon what Vivian told each of them during their separate interviews of Vivian when Vivian was motivated to lie to prevail in the litigation. 9A.App.1680.

Dr. Applebaum interviewed Vivian, but he qualified his opinion by stating he is not in a position to determine who is telling the truth, and if it turns out Vivian's account is inaccurate—which it was—he would have to modify his opinion. 9A.App.1682. Dr. Ronningstam also met with Vivian, but she made it very clear that her diagnosis was limited only to her evaluation: "This evaluation was done without the prior knowledge of other diagnostic and psychiatric evaluations." 9A.App.1681-1682. Dr. Thienhaus also met with Vivian. He made it very clear that his evaluation was based upon "Ms. Harrison's description of her symptoms." 4A.App.728.

Each of these three experts chose to ignore all of the collateral source information, including the eye witness detailed accounts of the parties' adult daughters. It is respectfully submitted that these three experts had do so in order to render the negative preliminary opinions they each provided.

Accordingly, based upon Vivian's own experts' methodologies, her harsh criticisms of Dr. Roitman are entirely unjustified.

IV. Conclusion

In conclusion, Vivian has chosen a strategy that baselessly and falsely attacks Dr. Roitman and Kirk—to distract the court from the real issues in the case—by focusing on a report that was never mentioned or discussed in Kirk’s fast track statement. Such an obvious, desperate tactic must fail. The court should reject the unjustified attacks in Vivian’s response.

DATED: May 13, 2015


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

14/ 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

IV. Conclusion

In conclusion, Vivian has chosen a strategy that baselessly and falsely attacks Dr. Roitman and Kirk—to distract the court from the real issues in the case—by focusing on a report that was never mentioned or discussed in Kirk’s fast track statement. Such an obvious, desperate tactic must fail. The court should reject the unjustified attacks in Vivian’s response.

DATED: _____

SEE PRIOR PAGE
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)
1335 Sherri Lane
Boulder City, Nevada 89005
Phone: (702) 271-6000
Email: kharrison@harrisonresolution.com
APPELLANT/CROSS-RESPONDENT


CERTIFICATE OF COMPLIANCE

1. I hereby certify that this fast track reply 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. [The Nevada Rules of Appellate Procedure do not contain a page/word limitation for a child custody fast track reply. This reply is being submitted pursuant to a motion seeking permission to file the reply.]

3. Finally, I certify that the information provided in this fast track reply is true and complete to the best of my knowledge, information, and belief.

DATED: May 13, 2015


ROBERT L. EISENBERG (#950)
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Phone: (775) 786-6868
rle@lge.net

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

ATTORNEYS FOR APPELLANT/CROSS-RESPONDENT

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this fast track reply 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. [The Nevada Rules of Appellate Procedure do not contain a page/word limitation for a child custody fast track reply. This reply is being submitted pursuant to a motion seeking permission to file the reply.]

3. Finally, I certify that the information provided in this fast track reply is true and complete to the best of my knowledge, information, and belief.

DATED: _____

SEE PRIOR PAGE
ROBERT L. EISENBERG (#950)
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Phone: (775) 786-6868
rle@lge.net

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

ATTORNEYS FOR 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 to Fast Track Response and Supplemental Appendix were submitted electronically to the Clerk of the Nevada Supreme Court, and therefore, when filed, electronic service will be 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: 6/1/15

Margie Nami