IN THE SUPREME COURT OF THE STATE OF NEVADA
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PAIGE ELIZABETH PETIT, Appellant, vs. KEVIN DANIEL ADRIANZEN, Respondent.	Supreme Court Docket No. District Court Case No. D-13-489540-N (Consolidated with D-13-489542-D)

APPELLANT'S REPLY BRIEF

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IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN DANIEL ADRIANZEN, Plaintiff, vs. PAIGE ELIZABETH PETIT, Defendant.	No.: 66565 **REPLY BRIEF**

Appellant, by and through her undersigned counsel, Telia U Williams, Esq., of the Law Office of Telia U. Williams Esq., files this brief in reply to appellee, Kevin Adrianzen's brief in opposition.[1]

[1] Again, for the sake of clarity and convenience, as well as to minimize confusion insofar as some of the parties share the same, or part of the same name, appellant will refer to herself and appellee by their first names, respectively, "Paige" and "Kevin." The minor child who is the subject of this petition, "Ryder," will also be referred to by his given, first name.

At the outset, Paige would like to point out that Kevin's brief in opposition has unfairly mischaracterized the reason that no joint appendix was filed in this appeal. No joint appendix was filed, not because it was not attempted, but because Paige's opening brief was due while Kevin was representing himself in proper person, and it was patently infeasible to do so. Although Kevin originally had counsel at the start of this appeal, Michael S. Strange, Esq., who appeared with Kevin at the court-mandated settlement conference, Kevin terminated his representation with Mr. Strange prior to the time that Paige filed her opening brief. At the same time, Kevin indicated his extreme reluctance to cooperate with Paige's counsel, Telia U. Williams, Esq. Among other things, Kevin refused to agree even to allow *himself* sufficient time to obtain new counsel, let alone to file a joint appendix. Kevin refused other reasonable requests of Ms. Williams, including a request for a telephone conference. As such, a joint appendix was not feasible.

Once Kevin hired new counsel, unfortunately, not only had Ms. Williams already had to submit her opening brief for her client, Paige, but she also had taken a leave of absence from work in order to take care of her ailing mother, who eventually passed away. Thus, any chance to labor on a joint appendix was unfortunately made impossible. Certainly, the lack of a joint appendix in this case was not the result of deliberate choices on the part of Paige's counsel. Nor was

did she act in bad faith toward Kevin, his counsel, or this court. Paige's appendix faithfully included all of the relevant documents from the lower court, as well as documents appropriately involved in her post-judgment motions.

Kevin's brief seems to overlook the potential import of Paige's requested relief. Although this court must necessarily concern itself with the child at issue in this appeal, Ryder, it cannot be lost on the court that the issues involved in this appeal potentially affect more than the parties in this case. As was pointed out in the opening brief, the Supreme Court of Nevada has not defined the contours of its surname jurisprudence for nearly a generation. Yet, obvious changes in the relations between men and women, as well as the rise in alternative, less traditional upbringing of children (including within marriage), up to and including the national legalization of gay marriage, makes the decision of Ryder's surname all the more important, indeed, portentous. It can no longer be taken for granted that it is in the best interest of a child to bear his father's surname.[2]

[2] Even states that are largely recognized as "conservative," have so held for well over a decade: *See, e.g., In re Guthrie*, 45 S.W. 3d 719 (Tex. App. Dallas 2001) (For purposes of determining whether a minor child's surname should be changed, the right of the mother to have the child bear her surname must be recognized as equal to that of the father); *Stable v. Meyer*, 45 Kan. App. 2d 941 (2011) (District court did not have authority to change child's last name as part of paternity action without consent of both parents, in case in which child's last name per birth certificate, was mother's last name, but father argued child's last name should be changed to father's last name); *D.W. v. T.L.*, 134 Ohio St. 3d 515 (2012) (Courts should not give greater weight to a father's interest in having the child bear the paternal surname because this preference fails to consider that the mother in this

Respectfully, it would be a mistake for this court to overly limit the analysis in this case to the narrow dispute of the parties. Though the broad standard of "best interests of the child," have guided Nevada's appellate court, as well as its sister appellate courts throughout the country, in situations involving constitutional rights, especially equal protection concerns, courts equally regard the rights and interests of interested parties, such as parents, in conjunction with the best interests of the child standard. For example, even where the nation's highest court has acknowledged a best interests of the child standard, it also liberally acknowledges countervailing interests, such as parental rights.[3] A child may not be removed from his parent—even a substandard one—simply because there is someone else

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situation has at least an equal interest in having the child bear the maternal surname and therefore is inherently discriminatory.) *See* Farole, Jr., Donald J., *Reexamining Litigant Success in State Supreme Courts*, 33 Law & Soc'y Rev. 1043 (1999) (implicitly cataloguing "conservative" states). Kevin's assertion that the court "named," rather than "renamed" him does not appear to have support in either Nevada law or the law in other states; a child is "named," for the purposes of American law, when he has had a name affixed to his birth certificate. This is, in common knowledge, a person's legal name (and appears on the social security card and driver's license, etc.), until changed by court order, or in the case of women, marriage. Moreover, no relevant, mainstream case law in any region has adopted an automated, formulaic algorithm, so to speak, of upon request by a parent, to hyphenate a child's name according to alphabetical order.

[3] *See, e.g., Adoptive Couple v. Baby Girl*, 133 S.Ct 2552, 2552-2566 (2013) (Noting statutory law that bars involuntary termination of a parent's rights to custody of a child without a "heightened showing" of harm to the child; not just "best interests" of child to remain in custody of more suitable adoptive parents suffices; and noting that issues of child custody can raise important equal protection concerns).

willing to raise the child who is likely to do a better job, i.e., it is in the child's "best interest" to be removed.[4] Courts must weigh also the rights of parents. Here, as explained in the latter sections of the opening brief, it would be dangerously unconstitutional for this court to find that it is necessarily in the best interests of a child to bear his father's last name.

Yet, indeed, inasmuch as no competent evidence was presented to the trial court to overcome the presumption that the name given a child at birth—and making it onto his birth certificate—should remain the child's name, the only factor that the trial court could logically have considered is that it is *ipso facto*, in a child's best interest to in some way, bear his father's surname. Here, the court reverse "split the baby" by appending Kevin's surname to what is a perfectly appropriate, respectable, and suitable surname for the child—Paige's last name. Kevin presented no evidence that he felt some strong sense of belonging or cultural or ethnic identity with respect to his last name, that he would in fact share with Ryder. And maintaining the integrity of Kevin's identity, such as it is, with his

[4] *See id.* at 2561. *And see, id.* at 2573 (J. Scalia, dissent) (Though disagreeing with the ultimate ruling of the majority, agreeing with the court's dictum, albeit with greater emphasis, that parental rights do sometimes trump the "best interest" of the child: "It has been the constant practice of the common law to respect the entitlement of those who bring a child into the world…We do not inquire whether leaving a child with his parents is 'in the best interest of the child.' It sometimes is not; he would be better off raised by someone else. But parents have their rights, no less than children do.")

stepfather's last name, simply does not outweigh Paige's equal protection in having her son bear her last name, or Ryder's best interest in having the same last name as his mother—without bulky and unpronounceable hyphenation. Though he is not in school now, the decision regarding Ryder's name will stand once he does go to school). In fact, there is no compelling reason to add "Adrianzen" to Ryder's name except as an honorific to his father. Or to reward his father for being a part of his life—an inappropriate and antiquated notion that should not in this day and age receive official or unofficial judicial sanction.

But even if this court were to find, contrary to law and equal protection concerns, that a father is entitled to have his offspring bear his last name, as a form of honor, the court should find that Kevin is not the type of father who should benefit from such an accolade. That is, if this court holds that Kevin is entitled to have Ryder bear his name as a legitimate badge of his (now) responsible fatherhood, it would still be prudent under the circumstances presented by this case to direct Kevin to his *other* "rights" of fatherhood, particularly spending time with, and emotionally and morally molding Ryder, in keeping with the joint legal custody he was awarded, just not with also requiring Ryder to have a long, unwieldy, hyphenated name.[5]

[5] Paige also takes issue with Kevin's characterization of her seeking of primary physical and sole legal custody as her having "complete disregard" for Kevin's

Regardless of the arguments over facts that the parties could dispute all day long, at the end of the day, it is in Ryder's best interest to keep the name he was given at birth. Such has in essence been the rule of this court for decades. Indeed, there is a *presumption* that the name given to a child is in his best interests, unless overcome by clear and convincing evidence.[6] The Nevada Supreme Court has shown that it has not aimed to make it easy for a petitioning parent to change the surname of a child after such name has been recorded on the child's birth certificate.[7] To be sure, most of Nevada's case law in this regard has involved unmarried women, it holds just as true for Paige. Inasmuch as Paige was only married to Kevin for a month before he sought a divorce, and never lived with him; she serves as Ryder's primary caretaker (with primary, not joint, custody);[8] Ryder spends the majority of his time with Paige and her family, albeit with liberal visitation with his father; and, Kevin was arguably not in Ryder's life at the

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parentage. The court patently did not agree that Paige was a wrongdoer; if so, it would not have awarded her primary physical custody as she sought.

[6] *See Magiera v. Luera*, 106 Nev. 775, 777 (1990) (The "burden is on the party seeking the name change to prove, by *clear and compelling evidence*, that the substantial welfare of the child necessitates a name change.") (Emphasis added)

[7] *See generally, id.*; *Russo v. Gardner*, 114 Nev. 283, 291 (1998).

[8] Nevada law strongly favors joint custody arrangements in awarding custody of children, (*see* NRS 125.490(1)), but as noted in Paige's opening brief, Paige overcome the presumption that joint custody was in Ryder's best interest and was given primary custody of Ryder. Nonetheless, the court appears to have wanted to "make it up" to Kevin for what must have been a disappointing outcome, (because Kevin also sought primary or joint custody), by accommodating Kevin's request to append his last name to Ryder's birth surname.

earliest, most tender days after his birth, did not provide assistance to Paige in her confinement, had to be ordered to help pay the medical expenses for the childbirth, and only sought a name change with his petition for divorce[9]; Ryder is not harmed by sharing a last name with his mother. Considering that Ryder is best suited to have the name of the parent that he is being raised by, and is in no way objectively disadvantaged in today's society by only having his mother's (and her family's) surname as his own, in light of the equal protection concerns, there is absolutely no reason to disturb Ryder's surname as recorded on his birth certificate.[10]

In conclusion, this court should reverse the district court's hyphenation of Ryder's surname. Alternatively, this court should remand the case to the district

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[9] *See generally*, Opening Brief, and exhibits thereto.

[10] Paige has carefully recorded the testimony regarding the circumstances of Ryder's birth, and provided documentation of the same, so will not repeat it here. But the somewhat hagiographic representation of Kevin's care and support of Ryder, and Paige, when she was pregnant with Ryder, and immediately after Ryder's birth, is not accurate or reasonable. Kevin was not in the hospital when Paige gave birth to Ryder. Kevin was not there when Paige brought Ryder home and did not visit—and this is undisputed—for several days after he was born. Yes, Kevin may have been brought around, and sought involvement in his son's life, and with court involvement, has been paying child support. (Kevin has still not paid for the medical costs involved in Ryder's birth). Not inapropos, Kevin's counsel advocates for the interesting, and ironically, somewhat compatible position as Paige's name petition, *that law and custom requiring fathers to pay for the expenses of a mother's pregnancy* ("confinement") are antiquated and should be abolished. *See* Shapiro, Bruce I., *NRS 125B.020(3) is Antiquated, Unfair and Unconstitutional*, NFLR, Winter 2013 (p.14) (convincingly arguing that the statute violates equal protection).

court to hold a hearing on whether clear and convincing evidence exists to change Ryder's surname.

DATED this 22nd day of February, 2016.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief 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 brief has been prepared in a proportionally spaced typeface using Word 2013 in Times New Roman.

2. I further certify that this brief complies with the page- or type- volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

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3. Finally, I hereby certify that have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all the applicable Nevada Rules of Appellate Procedure (NRAP), in particular, NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity

with the requirements of Nevada Rules of Appellate Procedure.

Dated this 22nd day of February, 2016.

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CERTIFICATE OF SERVICE

Pursuant to the Nevada Rules of Civil Procedure, I certify that I am an employee of the Law Office of Telia U. Williams and that on this 22nd day of February, 2016, I caused a true and correct copy of the above and foregoing Reply Brief to be served through the WIZNET e-filing system in accordance with the mandatory electronic service requirements of Administrative Order 14-2, and the Nevada Electronic Filing and Conversion Rules of the Eighth Judicial District Court, Nevada, to the following:

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