ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

JENNIFER GORDON,
Appellant,

vs.

MATTHEW GEIGER,
Respondent.

Supreme Court No. 67955
District Court No. D430699

FILED

SEP 01 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

MOTION FOR STAY PENDING APPEAL PURSUANT TO NRAP 8

Comes now Appellant Jennifer Gordon, in Proper Person, and respectfully requests this Court issue an order staying enforcement of the district court's order filed on March 20, 2015. Appellant filed a Motion for Reconsideration, New Trial, and Amendment of Judgment pursuant to NRCP rule 59; and Relief from Judgments pursuant to NRCP rule 60(b) in the district court. The district court denied the motion and failed to afford the relief requested by the Appellant, the Court advising that "it had reviewed the record that resulted in the prior Judge's ruling and found nothing inappropriate." The Order from that particular hearing was filed on April 09, 2015. Therefore Appellant files this Motion For Stay with the Supreme Court instead of the district court because she believes it would be impracticable at this point in time due to the recent denial of her Motion for Reconsideration and more recently a denial to her Motion to Conform the order filed March 20, 2015, to the judge's oral pronouncements. The Appellant would still be appealing the Order regardless if the court had granted her Motion to Conform, although the findings that were left out and the re-wordings of different findings and orders would have made the process of appeal much clearer.

Appellant filed her Notice of Appeal on May 05, 2015 in the district court.

The main reason for granting the relief requested should be the fact that the court significantly modified Appellant's custodial or "parental" rights and made certain restrictions with regards to an

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issue that had not ever been put before the court prior to the Evidentiary Hearing. This issue was presented at the time of the hearing and the attorneys met "off the record" for approx. 30 minutes to discuss the issue. The meeting of the attorneys and the court off the record did not result in any stipulated agreement. The court then made a ruling on issues not properly before it without taking adequate evidence on the matter, Appellant submits.

BACKGROUND

The Appellant, Jennifer Gordon, and Respondent, Matthew Geiger, were married August 17, 2005. Prior to the marriage they had two children, Weston, presently 13, and Chevy, presently age 10. The marriage was plagued by a plethora of serious problems on the part of Respondent, including, without limitation: alcoholism, drug abuse, multiple incarcerations, depression, police standoffs, and numerous 911 calls which led to a protective order being issued against the Respondent in May of 2010. He filed his complaint for divorce directly following the protective order proceedings, on May 26, 2010. On March 08, 2011 the court made note of the fact that Respondent was on probation. The court initially made rulings against the Appellant regarding alleged issues involving Appellant's fiancé and participation in the sport of wrestling by subject minor Weston. The Respondent had made a complaint to CPS about those issues and eventually those allegations were deemed unsubstantiated and that he had coached and alienated the children. Over the course of the proceedings, the Respondent also showed up late to hearings and missed two hearings on two separate occasions because he was yet again incarcerated. Respondent initially received supervised visitation only until he completed his psychological evaluation, which he had failed to have completed after being ordered repeatedly to do so. This custodial order was issued in conjunction with a finding of contempt on May 26, 2011, due to Respondent's noncompliance with the psychological evaluation.

Appellant and Respondent returned to court on Respondent's motion filed on April 09, 2013. He had not seen the children in almost 2 years at that point, because he had refused to go to the Open Arms facility where his supervised visitation was to take place. He had, however, finally completed the psychological evaluation. The psychologist was very clear that while the Respondent had passed his tests, "due to his past history, I could only recommend that the courts use caution and perhaps obtain information from third party data sources." On May 07, 2013 the court ordered a therapeutic reunification between Respondent and the children that would be closely monitored through a series of "status" checks by the court, and for Respondent to submit to an immediate hair and urine test, and to produce his tax returns for the issue of "not paying" his child support. The court returned on May 21, 2013 and noted that Respondent tested positive for methadone and THC, which violated the terms of his probation, though he claimed to have prescriptions for such substances. The court also noted his failure to bring his tax returns as he had previously been ordered to do. On September 03, 2013 a minute order was drafted by the Court finding that Respondent had failed to report his income. On November 07, 2013 the Court conferred with the reunification therapist and issued an order permitting Respondent to exercise small windows of unsupervised visitation with the children. On January 16, 2014 the court again modified the custodial timeshare by extending Respondent's visitation time to every weekend except the 1st weekend of each month, even though there was no motion before the court for any change in visitation at that point in time. Moreover, the January 16, 2014 orders modifying the custodial timeshare were pronounced absent any evidentiary hearing or trial regarding Respondent's psychological evaluation, or any allowance of an extension of time for either party to pursue rebuttal or otherwise take that psychological evaluation into account. On February 19, 2014 the parties went to court on Appellant's Order to Show Cause whereas Respondent was found in contempt and

sentenced but the sentence was suspended on the court's confusion regarding the date the court thought the Appellant was asking for contempt when the correct date was clearly stated in her Motion. On May 01, 2014 there was a 'final" status check hearing to set the summer schedule and holiday schedules. On June 19, 2014 Respondent filed a petition with the child support court to modify his child support even though the district court's order filed September 16, 2013 said "Absent a stipulation between the parties there shall be no modification to this Order without a petition for same to Department T". The "register of actions" at the time showed a bench warrant had been out for the Respondent since October 23, 2013. Upon seeing this, Appellant immediately contacted the probation office for fear that the children, who had just recently started having unsupervised visits with Respondent, might get caught up in Respondent's legal troubles and could possibly be taken away if Respondent was arrested while they were in his care and custody. Additionally, prompting her motion, Appellant had learned that Respondent had removed the child from the jurisdiction without her consent.

Chevy got sick while out of town with Respondent. Chevy has been closely monitored and cared for by Appellant since he had brain surgery in July 2013 for a brain condition called Chiari Malformation type 1. This was and is a condition that Respondent does not understand. He has failed to be a part of any of Chevys appointments or care. Due to his condition and the recovery process from his surgery Chevy was and remains prone to severe headaches, body pains and vomiting and Appellant has always kept a detailed log of any ailment, dates, times, weather, locations etc, that occur with Chevy. Chevy is also closely monitored by his neurosurgeon. The logs help the neurosurgeon decide what tests or scans they need to run and how Chevy's progress after surgery was going. Respondent is unwilling to keep a log while the children are in his care and custody and has refused to communicate with Appellant anytime Chevy has developed other

ailments. All of this coupled together and followed by the Respondent's arrest on July 26, 2014 prompted Appellant's emergency motions filed on August 4, 2014, the same motions that inevitably produced the judgment filed on March 20, 2015, which this Motion For Stay is intended to address.

ORDER TO BE STAYED

Appellant is appealing the entire order but only asking the following orders filed March 20, 2015 be stayed: **1)** "Defendant is not to leave the minor children in the care of her boyfriend at any time. In the event that Plaintiff can provide a credible witness that Defendant has left the minor children alone with her boyfriend, a change in custody would be warranted." **2)** "Plaintiff's visitation with the minor children shall be extended to include the first four (4) weekends of each month, beginning on Friday at 6:00 p.m. and continuing until Sunday at 6:00 p.m. Defendant shall have the minor children during the fifth weekend (where applicable)." **3)** "In the event that Defendant would like to plan a trip with the children, she is to provide Plaintiff with two (2) weeks notice that she wants the children for a weekend. Defendant may do this up to four (4) times per year if she is engaged in a special activity with the children that weekend, which will give her eight (8) weekends per year total. The rest of the weekends shall be spent with Plaintiff."

STATEMENT OF FACTS

On October 09, 2014, the district court made rulings against Appellant based on an "OFF THE RECORD" child interview and "OFF THE RECORD" CPS reports. Neither of which was presented until October 09, 2014, the day of the hearing, and neither of which was shared with counsel and/or the parties prior or even on the record to be heard that day. Several of the findings from that day were based solely off of the misinterpreted CPS reports but were left out of the Order. Appellant filed a detailed Motion to Conform because of the multiple errors in the

Order, including that Appellant's attorney was supposed to sign off but was never given that opportunity. Appellant's counsel even stated initially that the Order was incorrect and one-sided but opposing counsel submitted it anyway, over five months after the hearing, just four days prior to the hearing of Appellant's Motion for Reconsideration, et al.

The sole reason an evidentiary hearing was scheduled was to hear testimony from the probation officer who was at the center of the allegations from Respondent's Opposition and Countermotion to Appellants Motions. Appellants original Motions filed on August 4, 2014 were granted an Order Shortening Time on August 6, 2014 setting a hearing for August 28, 2014. Appellant having received Respondent's Opposition and Countermotion only the day before the hearing and because of the multiple allegations Respondent made in his opposition, the Judge continued the Appellant's motion so she would have time to file a reply, and to obtain another drug test from the Respondent. The Judge also set the probation officer portion of the return hearing as an evidentiary hearing. Also, upon Respondents request, another child interview was requested. Receiving the interview summary the day of the hearing might be an acceptable procedure if the interview was only being used as a basis to set an evidentiary hearing, but it is not acceptable if being used as a basis to modify custody. The court specifically ordered "that this is a permanent Order by this Court sua sponte and is based on the children's interviews, which were support by CPS records as far as the Court is concerned." Yet the CPS investigation came back with the allegations being unsubstantiated and moreover they were unsubstantiated for multiple reasons. Much of the court's findings were based off of what they believed to be statements from a "mandatory reporter", however much of what was read aloud in court, during her orders, were statements the "reporter" had taken from the estranged party whom had filed the reports, and from the children, who had all been coached, according to the

report. Two of the children in Appellant's house were kidnapped on August 22, 2014 by their mother (the Appellant's fiancé's ex-wife) in Indiana. The mother, attempting to rid Appellant's fiancé of custody, maliciously filed sexual and physical abuse reports in a statement to Detective Gary Cox in Ligonier, IN. The mother also filed false "citations" in the Indiana family courts claiming the same. Detective Cox had NOT opened an investigation but instead had forwarded the report to the state of Nevada to be looked into. His findings as well as the state of Nevada were to close the investigation. He also signed an affidavit to the Indiana courts that what she had claimed was untrue. The Indiana courts immediately ordered the children to be returned to Nevada and to the custody of their father, Appellant's fiancé, whom has sole physical AND sole legal custody of his children. The two girls were interviewed in Indiana, with their mother, and again upon their arrival back in Nevada. The Nevada case worker and detective had believed that their "case notes" were clear because they coincided with their findings of unsubstantiated. When the case worker stated that "all the children had been coached" she was not talking about being coached by the Appellant or her fiancé, but by the estranged party who had filed the reports. Had the Appellant had any inkling that she would be ambushed with such information on the day of the motion hearing, she would have provided sworn statements and issued subpoenas for testimony from all the parties involved in those reports, as is her right to confront the evidence and allegations brought against her. Not only was Appellant not given any notice from the courts regarding their bringing their "own motion" but the witnesses Appellant *did* bring with her that day to testify in regard to other issues were not even allowed to be called, though they could certainly have helped to shed light on the profoundly incorrect assumptions of the court. ALL of the children in the home ended up suffering from the multiple issues brought on at the same time by Respondents incarceration and the other children's mother kidnapping

and filing reports. This is not the first time that Appellant's fiancé's "ex" or Respondent have filed malicious reports against Appellant and her fiancé in apparent attempts to gain legal advantage in custody disputes. Appellant tried to offer information to the court during the hearing, but the court would not entertain any of it. Appellant even told the court where the report originated and what had taken place since then, which was all documented, yet the court indicated it didn't believe her. Appellant's counsel asked several times during the course of the hearing for a continuance, but was denied each and every time. The Judge's rulings that day were entirely based off of her misinterpretation of the CPS records. Records which again she had stated she had been thinking about since September 3, 2014, yet had never been discussed until the day of the hearing, about 30 minutes before the hearing, off the record. She even stated a finding from the interview that contradicted her own rulings when she said, "Weston is not stressed or distressed by the current schedule. He likes it just the way it is. Chevy had nothing to offer." To date, Appellant has still not been able to obtain the CPS records which the court based their judgments from, nor any type of summary from the children's interview. The presiding district court judge stated that she was denying Appellant's Motion for Reconsideration "after reviewing the record" but how can one review something which was never placed on the record to begin with. Respondent's visitation was thus extended without any motion before the court and again based off of evidence that was informally taken into consideration sua sponte by the court on the day of the hearing, violating Appellant's due process right to a full and fair hearing. Appellant's custodial rights were further violated when her parenting rights, forcing supervision of her fiancé, and father of one of her children, around her children. The court's rulings that day directly contravene the best interests of the children in numerous respects, and Appellant is therefore entitled to redress as requested herein.

EFFECT ON APPEAL

This stay greatly affects the entire basis of the appeal. The issues to be presented on appeal are the following:

- Did it violate the Appellant's due process rights when the court sua sponte introduced for the first time documentary evidence to the litigants at the start of a evidentiary hearing leaving the litigants no time to prepare for the validity, veracity, or credibility of the evidence, over the objection of the Appellant and a request for a continuance?
- Is it error for the Court to expand the scope of an evidentiary hearing, i.e. turning a motion hearing into an evidentiary hearing on the day of the motion hearing that was being held in conjunction with a limited scope evidentiary hearing, without prior notice to the litigants?
- Did the District Court err when it changed the Appellant's custodial rights, i.e. gave the Respondent more visitation time and made a ruling that the Appellant's fiancé was not allowed around the subject minor children unsupervised even though the Appellant and her fiancé have a child together and live together, all without a full and fair hearing?
- Did the Court commit any other error that rises to the level of an abuse of discretion?

HARM TO APPELLANT/RESPONDENT

No harm would come to the **Respondent** because the orders and visitation would simply go back to the way it was. These Orders have already caused extreme hardships to both the children and the **Appellant** because they have been in place for 10 months, but this Court should put a stop to that ongoing hardship immediately. Since the Orders were issued, the Appellant's household and structure has been turned upside down. Appellant and her fiancé tried everything to attempt to work with the supervisions but it proved to be a hardship on all the children. Having 6 children together and all of them except for the baby involved in multiple sports, and music, it was too hard for Appellant to run children around and allow the boys to get their homework done without being alone in the household with her fiancé. It also proved impossible for the Appellant to work because she had to leave the house AFTER the fiancé and get home BEFORE the fiancé on any given day. Because of the hardships, the fiancé was forced to leave shortly after Christmas 2014 to work out of state. Appellant has been trying everything possible

to fix what happened so she can have the orders brought inline with the best interests of the children and thus allow for him to return home. Since her fiancé is gone, Appellant is now usually alone in caring for 6 children (2 of whom are subject minors) and their busy schedule. Her fiancé makes very few trips home in fear that another false allegation could be made, thereby improperly frustrating her ability to exercise custody.

Since the Orders the boys have begun losing their bond with Appellant's fiancé, who has been like a step-father figure, though the two are not yet married. No more batting cages, no more mentoring, no more being their sports coach, and no more one on one talks. They complain constantly about him not being home anymore and how it's not fair; they are clearly suffering under the current orders. They no longer go to church because they rarely have a weekend with the Appellant. Appellant had to pull Weston out of his sports because Respondent was no longer taking him. The children's grades starting dropping, which was unheard of for Weston being as he typically holds a 3.7 GPA and belongs to the highest honor band. He has been suspended on few occasions as well now. The Respondent continues to throw false allegations and Appellant prays for rectification of this increasingly dire circumstance which has resulted from the clear error of the court below.

SUCCESS ON APPEAL

Appellant believes she will have success on this appeal because the law is behind her, and her requests dovetail cleanly with the best interests of the children. Her constitutional rights of due process and a fair hearing were violated and continue to be violated, and the children are suffering; the Court has the ability to right this wrong and should do so.

DATED this 28th day of August, 2015.

Jennifer Gordon, Appellant in Proper Person

AFFIDAVIT OF JENNIFER ELISE GORDON

STATE OF NEVADA)
: ss.
COUNTY OF CLARK)

JENNIFER ELISE GORDON first being duly sworn, deposes and says:

1. That Affiant is the Appellant in the above-entitled action and competent to testify to the matters contained herein; that she makes this affidavit in support of her foregoing "Motion For Stay."

2. That Affiant has read the foregoing Motion and hereby certifies that the facts set forth in the Motion are true of her own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters, she believes them to be true. Affiant hereby incorporates those facts into this affidavit as though they were set forth in full herein.

JENNIFER ELISE GORDON

SUBSCRIBED and SWORN before me
this 28th day of August, 2015.

NOTARY PUBLIC IN AND FOR
SAID COUNTY AND STATE

KELLY PERRI
Notary Public State of Nevada
No. 14-14485-1
My Appt. Exp. July 28, 2018

CERTIFICATE OF MAILING

The foregoing "Motion For Stay" in the above-captioned matter was served this date by mailing a true and correct copy thereof, via first class mail, postage prepaid and addressed as follows:

Peter Bellon, Esq.
732 South Sixth Street, #102
Las Vegas, NV 89101
Attorney for Respondent

DATED this 28 day of August, 2015.

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elise433@gmail.com
Appellant in Proper Person