

IN THE SUPREME COURT OF THE STATE OF NEVADA

JENNIFER ELISE GORDON,

Appellant,

vs.

MATTHEW ROBERT GEIGER,

Respondent.

Case No. 67955

District Court Case No.: D-10-430639-D

Dept.: T

Electronically Filed
Feb 17 2016 08:52 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**APPELLANT’S MOTION TO STAY ENFORCEMENT OF THE
DISTRICT COURT’S MARCH 18, 2015 ORDER**

COMES NOW Appellant, Jennifer Elise Gordon (“Appellant” or “Gordon”), through her counsel of record, Greenberg Traurig, LLP, and hereby files her Motion to Stay Enforcement of the District Court’s March 18, 2015 Order, as follows:

I. INTRODUCTION

Appellant seeks a stay of the district court’s March 18, 2015 order (the “Order”) which imposes unreasonable and unworkable conditions on Appellant’s sole physical custody of her two sons. Specifically, Appellant seeks a stay of the district court Order to the extent that it prohibits her two sons from being alone with their soon-to-be step-father, Appellant’s fiancé, Mr. Lizares, despite the fact the two boys live in the same residence as Mr. Lizares. Moreover, the district court’s Order was based on a fatally-deficient procedure that denied Appellant notice and an opportunity to be heard in contravention of her due process rights. Finally, the Order causes irreparable harm to a would-be family unit whose members are currently prohibited from being alone together despite living in the same residence.

The Order prohibiting Appellant’s sons from being alone with Appellant’s fiancé was based on non-admissible and unreliable hearsay statements contained in CPS reports. Indeed, the district court’s Order makes repeated reference to a “CPS

Report” that was never admitted into evidence or even shown to the parties. The CPS report at issue was initiated by the mother of two of Mr. Lizares’ daughters and did not even concern Appellant and Respondent’s two sons. This report, despite being relied on by the district court without notice to the parties and without introducing the report into evidence, was found to be wholly unsubstantiated and CPS investigators concluded that Mr. Lizares’ daughters had been coached by their mother, who initiated the false reports to CPS. Indeed, Mr. Lizares has been granted sole physical and legal custody of his daughters and has never been found to have harmed any of the children in any way.¹ Nevertheless, the district court ordered that based on the unsubstantiated CPS report, Appellant’s fiancé could not be alone with Appellant’s two sons despite living under the same roof and despite all being members of a combined family unit that is being torn apart by the district court’s unworkable and baseless Order.

Moreover, the district court’s Order that placed conditions on Appellant’s physical custody of the children was entered after an evidentiary hearing that was held on *Appellant’s* motion to modify *legal* custody and for an order to show cause regarding Respondent’s failure to pay child support. No notice was ever provided to Appellant that her physical custody rights were even at issue. Nor was Appellant allowed to introduce evidence to contradict the unsupported, and unsubstantiated allegations recited in the CPS report concerning two of the *other* children in her household.

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¹ See Minute Orders and Dissolution Decree, collectively attached hereto as **Exhibit 1**, awarding Mr. Lizares sole physical and legal custody of his daughters and terminating the visitation rights of their mother. Appellant requests the Court to take judicial notice of Exhibit 1, which are public records and capable of verification. NRS 47.150; *see also, Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009) (taking judicial notice of judgment from another trial involving the same events and parties).

Appellant's motion set forth competent, admissible evidence, demonstrating that Respondent Matthew Geiger had failed to pay his child support obligations for his two sons, and that his recently-ordered unsupervised visitation was perhaps unwise based on his continued warrants and arrests, as well as his failure to take adequate precautions for their son Chevy's rare brain condition. Appellant never had notice that the district court was considering any modification of the terms of her physical custody of this children, or that the district court was considering a CPS report that did not even involve her two sons, and which was found to be wholly unsubstantiated by CPS. The grave procedural irregularities at issue in this case, and the clear deprivation of Appellant's due process rights warrant a stay of the district court's Order pending this appeal.

II. STATEMENT OF FACTS

Appellant and Respondent have two minor children together and were divorced in 2011. Between 2011 and 2013, Respondent was allowed only supervised visitations with the children based on Respondent's past substance abuse and incarcerations. On May 7, 2013, the district court ordered a therapeutic reunification between Respondent and his two children, as it had been nearly two years since Respondent had seen his sons. On January 16, 2014, the district court modified Respondent's visitation schedule to allow him unsupervised visitation every weekend except the first weekend of each month.

On July 26, 2014, Respondent was arrested. Respondent's arrest occurred while Respondent had his sons for a weekend visitation. Concerned about the issue repeating in the future, as well as for the safety of her sons, Appellant filed emergency motions on August 4, 2014 to address her concerns regarding Respondent's continued arrests and the visitation schedule. Appellant's motion also sought an order to show cause why Respondent was not meeting his child support obligations. Additionally, Appellant's August 4, 2014 motions set forth concerns

Appellant had regarding Respondent's ability or desire to care for their son Chevy, in light of his rare brain condition and resulting special care needs.

Although Appellant's August 4, 2014 motions were filed on an emergency basis and on shortened time, there were some delays in the briefing schedule and an evidentiary hearing on Appellant's motions was not held until October 9, 2014. During the October 9, 2014 evidentiary hearing, the district court repeatedly referred to a "CPS report," even though no report was offered or entered into evidence. Nevertheless, the district court made oral rulings at the October 9, 2014 hearing that based on a CPS report, the district court was ordering that Appellant's two sons could not be alone with Appellant's fiancé, Mr. Lizares. The Court's October 9, 2014 ruling was eventually reduced to a written order that was signed by the district court on March 18, 2015² and filed with court on March 20, 2015. The Order provides, in pertinent part:

The Court further finds that it has serious concerns with regard to the CPS Report involving Defendant's home and the information obtained from the child interview;³

...

The Court further finds that the CPS records reveal that the minor children were consistent with regard to physical punishment in Defendant's house;

The Court further finds that the CPS worker and the detective both believed when they interviewed another child from the residence the child had been coached.

The Court further finds that it had been ready to change physical custody this date based on the child interview and the CPS report where the same information was provided to the CPS Investigator;

...

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² Notably, the judge that oversaw the October 9, 2014 evidentiary hearing, the honorable Judge Nathan, was no longer on the bench at the time the March 18, 2015 order was entered. The Honorable Judge Brown signed the March 18, 2015 order.

³ The Court's reference to a "child interview" is also perplexing, as the record available to counsel does not indicate that a child interview occurred.

IT IS FURTHER ORDERED that 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.

March 18, 2015 Order at 2-4.

Based on the procedural irregularities that occurred at the October 9, 2014 hearing, including the lack of notice to Appellant or an opportunity to present evidence and testimony regarding the fitness of her fiancé to spend time alone with her sons, Appellant filed a Motion for Reconsideration, New Trial, and Amendment of Judgment. The district court denied Appellant's Motion for Reconsideration, New Trial, and Amendment of judgment on April 9, 2015. Appellant then initiated this appeal.

III. LEGAL ARGUMENT

In determining whether to issue a stay pending appellate review, the Court should consider the following factors: (1) whether the object of the appeal will be defeated if the stay is denied; (2) whether the appellant will suffer irreparable harm if the stay is denied; (3) whether the respondent will suffer irreparable harm if the stay is granted; and (4) whether the appellant is likely to prevail on the merits in the appeal. *See Mikohn Gaming Corp., v. McCrea*, 120 Nev. 248, 89 P.3d 36, 38 (2004) (citing NRAP 8(c)). If one or two factors are especially strong, they may counterbalance other factors.

Here, the Court should stay enforcement of the district court's March 18, 2015 Order because Appellant is likely to succeed on the merits of her appeal and failure to issue a stay will result in irreparable harm to Appellant and her family.

a. Appellant Is Likely to Succeed on the Merits of Her Appeal Because the District Court's Order Deprives Her of Due Process and Was Based on Inadmissible Hearsay Evidence

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A stay is warranted because Appellant enjoys a high likelihood of success on the merits of her appeal because the District Court's Order deprived Appellant of due process and was based on inadmissible hearsay evidence.

1. The District Court's Order Deprives Appellant of Due Process

Article 1, Section 8 of the Nevada Constitution states, in pertinent part: "No person shall be . . . deprived of life, liberty, or property, without due process of law . . ." The 14th Amendment to the U.S. Constitution contains a similar provision. Fundamental to due process of law is the opportunity to be heard in a meaningful manner and at a meaningful time. *Goldberg v. Kelly*, 397 U.S. 254, 267, 90 S. Ct. 1011, 1020 (1970); *see Wright v. Cradlebaugh*, 3 Nev. 341, 349 (1867) (due process "not only requires that a party shall be properly brought into court, but that he shall have the opportunity when in court to establish any fact, which according to the usages of common law or the provisions of the constitution would be a protection to himself or his property").

Due process is especially important concerning parental custody rights. "Litigants in a custody battle have the right to a full and fair hearing concerning the ultimate disposition of a child." *Wiese v. Granata*, 887 P.2d 744, 110 Nev. 1410 (1994). A party threatened with the loss of any parental rights "must be given the opportunity to disprove the evidence presented." *Id.*

Here, Appellant was denied a full and fair hearing concerning the significant limitations imposed by the district court on Appellant's custody of her sons. Appellant never received any notice that her custody rights were at issue nor did she receive the opportunity to disprove or challenge evidence relied upon by the district court but never entered into evidence or even shown to the parties. Indeed, Appellant was not even afforded the right to review the CPS report that formed the basis of the district court's Order.

In fact, the evidentiary hearing that preceded the district court's Order at issue was a hearing to address *Appellant's* motion to modify custody and visitation after Appellant provided the court with evidence that Respondent's continued warrants and arrests caused Appellant concern that Respondent could be arrested while he had her sons on a weekend visitation. The evidentiary hearing was also based on Appellant's motion for an order to show cause why Respondent was not paying his child support. Respondent never made a counter-motion for custody modification and Appellant therefore had no notice that her custody rights were at issue or that she would need to provide evidence of her fiancé's good character and parenting skills—skills he has developed while having sole physical custody of his own two daughters. Appellant therefore was deprived of any notice or hearing to challenge the “evidence” that was ultimately relied on by the district court in reaching the conclusion that Appellant's fiancé could not be alone with Appellant's two sons.

Furthermore, the district court's Order cannot be reconciled with the fact that Appellant and her fiancé between them have sole physical custody of six children. If either of them posed any threat of harm to the children, presumably courts would not continually find them to be the parents most suitable to have physical custody of their children.

This Court should issue a stay of the district court's Order to allow for an appeal of these issues given the serious rights at issue and procedural irregularities evident from the face of the record.

2. The District Court's Order Was Based on Inadmissible Hearsay

In addition to being denied any notice or opportunity to be heard regarding the Court's Order prohibiting her fiancé from being alone with her sons, Appellant's rights were curtailed based on inadmissible hearsay evidence. Indeed,

the district court's Order by its own terms relies on a "CPS report" that was never authenticated *or even offered into evidence*. The District Court's Order also relies on the statements of a CPS worker and investigator who never testified at the hearing.⁴

Hearsay, which is generally inadmissible, is defined as "a statement offered in evidence to prove the truth of the matter asserted." NRS 51.035. The lower court "may not consider hearsay or other inadmissible evidence." *Adamson v. Bowker*, 85 Nev. 115, 119, 450 P.2d 796, 799 (1969).

Here, the CPS Report relied upon by the district court was never offered into evidence and does not appear in the record. Nor does the testimony of the "CPS worker and the detective" upon whose notes the district court relied. The "CPS Report" is inadmissible hearsay because it is out of court statements that were relied upon by the district court for the truth of the matters asserted therein. Unfortunately, Appellant is unable to make a more particularized objection given that she was never shown the "CPS Report" at issue, and it was never offered or entered into evidence, despite repeated reference to it in the district court's Order. It is clear that the district court relied on statements contained in the report for the truth of the matters asserted, and improperly based custody decisions on the same. However, the CPS report in question concluded that the report of abuse made by the mother of Mr. Lizares's children was found to be unsubstantiated.

Given that the reports were unsubstantiated, the content of the reports were clearly taken out of context and statements made *to* investigators were likely construed by the district court to be statements made *by* the investigators. Because the parties were not allowed access to the CPS reports upon which the district court made its ruling, nor were they able to cross-examine the CPS

⁴ Had Appellant been given notice that such issues would be raised, arrangements for such testimony could have been made.

investigators who made the statements contained in the reports, Appellant was unable to challenge the evidence and was similarly unable to present the testimony of the CPS worker who authored the reports and who would have testified that the reports were found to be wholly unsubstantiated. The worker could also explain the significance of certain notations made in the investigative report that the district court improperly relied upon when ruling that a soon to be step-father cannot be alone with two of the six children in the household despite a lively home environment and numerous extra-curricular activities and appointments. Accordingly, a stay of the district court's Order is warranted pending this appeal.

This error, which is clear from the face of the record, warrants a reversal and a stay of the district court's Order pending appeal.

b. The District Court's Order Causes Irreparable Harm to Appellant and Her Family

Appellant and her children continue to suffer irreparable harm based on a procedurally-deficient order that the ruling judge admitted was based on inadmissible and unreliable hearsay evidence, which Appellant was denied the opportunity to review or challenge. The Order prevents Appellant's fiancée from being alone with his soon-to-be stepsons despite residing at the same residence.

As a practical matter, this order prevents Appellant from allowing her fiancé to drive in any car pools involving her sons, unless she is also present; from allowing her fiancé to stay with all of the children while Appellant runs errands; instead, Appellants must take her sons, including her special needs child, with her on such errands or procure other child care arrangements; from allowing Mr. Lizares to drive either of Appellant's sons to and from school or sports events. Indeed, the district court's Order puts Appellant and her fiancé in an unworkable living arrangement, who between them have six children living in

the same household, resulting in scheduling nightmares where Appellant must always be present when Mr. Lizares is also present in the home.

The order is particularly egregious given that it has prevented any bonding activities between Mr. Lizares, and his future stepsons. Appellant and her fiancé have been together over five years, and have sole physical custody of six busy children. However, the Court's order prevents this blended family from becoming into a single family unit. Far from protecting the children, the district court's order separates the children, and tears the children's family apart.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests the Court order that enforcement of the district court's March 18, 2015 order be stayed pending this appeal.

DATED this 16th day of February, 2016.

GREENBERG TRAURIG, LLP

By: /s/ Moorea L. Katz
TAMI COWDEN, ESQ.
NEVADA BAR NO. 8994
MOOREA L. KATZ, ESQ.
NEVADA BAR NO. 12007
3773 Howard Hughes Pkwy.
Suite 400 North
Las Vegas, Nevada 89169
Attorney for Appellant Jennifer Gordon

CERTIFICATE OF SERVICE

This is to certify that on February 16, 2016, a true and correct copy of the foregoing **APPELLANT’S MOTION TO STAY ENFORCEMENT OF THE DISTRICT COURT’S MARCH 18, 2015 ORDER** was served via this Court’s e-filing system, on counsel of record for all parties to the action below in this matter, and via U.S. regular mail, as follows:

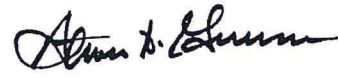
Eric M. Pepperman, Esq.
Kemp, Jones & Coulthard, LLP
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169
Counsel for Respondent Matthew Robert Geiger

/s/ Joyce Heilich
An employee of Greenberg Traurig, LLP

EXHIBIT 1

ORIGINAL

Electronically Filed
06/03/2015 10:11:31 AM



CLERK OF THE COURT

1 NEO
2 GARY M. ZERNICH, ESQ.
3 Nevada Bar No. 7963
4 KRISTOFER J. SNOW, ESQ.
5 Nevada Bar No. 13253
6 ZERNICH LAW OFFICE
7 600 Whitney Ranch Drive, Ste. A-5A
8 Henderson, Nevada 89014
9 (702) 616-9838
10 "Unbundled" Attorneys for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

11 HEATHER LIZARES,

12 Plaintiff,

13 vs.

14 BARON LIZARES,

15 Defendant.

CASE NO. D506417
DEPT. NO. S

Hearing Date: 5/18/15
Hearing Time: 9:00 a.m.

NOTICE OF ENTRY OF ORDER FROM THE HEARING OF MAY 18, 2015

18 PLEASE TAKE NOTICE that the Order from the Hearing of May 18, 2015 in the
19 above-entitled matter was entered on the 2nd day of June, 2015. A copy of said Order is
20 attached hereto.

21 DATED this 3rd day of June, 2015.

22 ZERNICH LAW OFFICE

23 /s/ Gary Zernich

24 GARY M. ZERNICH, ESQ.

25 Nevada Bar No. 7963

26 600 Whitney Ranch Drive, Ste. A-5A

27 Henderson, Nevada 89014

28 (702) 616-9838

Attorneys for Defendant

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Heather Lizares
311 W Harris Street
Eaton, IN 47338

Kelly P

Kelly Perri, an employee of
ZERNICH LAW OFFICES

Alan D. Lamm
CLERK OF THE COURT

HEATHER LIZARES.

Plaintiff,

vs.

BARON LIZARES,

Defendant.

CASE NO. D506417
DEPT. NO. S

Hearing Date: 5/18/15
Hearing Time: 9:00 a.m.

This matter having come on for status check regarding travel times and tickets for the minor children's visitation on the above-referenced date in the Family Division, Department S. of the Eighth Judicial District Court, County of Clark, and with Plaintiff, HEATHER LIZARES, not being present, and Defendant, BARON LIZARES, being present and represented by and through attorney GARY M. ZERNICH, ESQ. of the ZERNICH LAW OFFICE, appearing in an unbundled capacity, and the Court being fully advised in the premises, both as to the subject matter as well as the parties thereto, and that jurisdiction is proper, and good cause appearing:

THE COURT NOTED as follows:

~~SECRET~~

322 2/5

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- Mother was going to appear telephonically. Several attempts by the Court's Marshall to reach Mother via telephone were made and were unsuccessful. The Marshall was unable to reach Mother at the phone number on the record and with the Court.
- Attorney Zernich advised that Father has not heard from Mother in regard to the ticket purchase for the minor's children visitation. Father had reached out to Mother and Mother has not responded.
- There were discussions and requests made by counsel regarding reimbursement to Father regarding \$500.00 in out of pocket medical costs, reimbursement for attorney fees for counsel in Indiana, and attorney's fees for today's hearing.
- That Mother was prior to this hearing going to have the first half of the summer as visitation time with the minor children.

THE COURT ORDERED, ADJUDGED AND DECREED as follows:

- Based on Mother having failed to appear for the status check hearing, that unless Mother provides a travel ticket before the end of the month, Mother's visitation schedule is suspended.
- If Mother's visitation schedule is suspended, there shall be no further visitation with Mother until Mother files a Motion.
- The Court clarified the Order of the Court in regard to child exchanges. Child exchanges shall be at the airport and the minor children shall be there for exchanges at least two (2) hours before the flight leaves the airport.
- If a party causes problems or delays during child exchanges, the delaying party shall be responsible for additional expenses related to the delay.
- The amount owed to Father in the amount of \$1,700.00 for the reimbursement of past travel tickets and the reimbursement for the purchase of a rental car to pick up the minor children is reduced to judgment.
- That the amount of \$500.00 owed to Father for the out of pocket medical expenses is reduced to judgment.
- That Father's award of attorney fees for the Indiana attorney in the amount of \$1,800.00 is reduced to judgment.

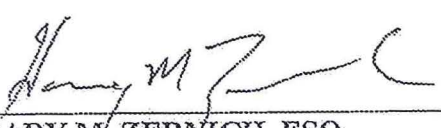
- That Father's request for attorney fees for today's hearing in the amount of \$600.00 is granted.
- The parties shall not talk to the minor children regarding the litigation in Indiana or in Nevada or that party will be held in contempt. Sanctions shall apply for violations, which may include suspended visitation, fines or other sanctions.
- Attorney Zernich is to prepare the Order from the hearing.

DATED and DONE on MAY 28, 2015.


DISTRICT COURT JUDGE
VINCENT OCHOA

Respectfully submitted by:

ZERNICH LAW OFFICE


GARY M. ZERNICH, ESQ.

Nevada Bar No. 7963

KRISTOFER J. SNOW, ESQ.

Nevada Bar No. 13253

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"Unbundled" Attorneys for Defendant

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REGISTER OF ACTIONS

CASE NO. D-14-506417-D

Heather Lizares, Plaintiff vs. Baron Lizares, Defendant.

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Case Type: **Divorce - Complaint**
Subtype: **Complaint Subject Minor(s)**
Date Filed: **12/03/2014**
Location: **Department S**
Cross-Reference Case Number: **D506417**

PARTY INFORMATION

Defendant	Lizares, Baron 91 Autumn Day ST Henderson, NV 89012	Male 5' 5", 180 lbs	Lead Attorneys Pro Se
Plaintiff	Lizares, Heather 311 W Harris ST Eaton, IN 47338 Other Agency Numbers 2709978 Justice Court Scope ID Subject Identifier	Female 5' 1", 96 lbs	Pro Se
Subject Minor	Lizares, Kai Lee	Female	
Subject Minor	Lizares, Khloe Lynn	Female	

EVENTS & ORDERS OF THE COURT

05/18/2015 **Status Check** (9:00 AM) (Judicial Officer Ochoa, Vincent)
/Status Check regarding the travel times and ticket info for the minor children's visitation in Indiana. Mom may appear telephonically.

Minutes

05/18/2015 9:00 AM

- STATUS CHECK REGARDING TRAVEL TIMES AND TICKET FOR MINOR CHILDREN'S VISITATION Attorney Gary Zernich, Bar # 7963, present with Defendant/Dad, and appearing an UNBUNDLED CAPACITY Plaintiff/Mom was to appear telephonically. However, upon attempts the Court's Marshal was unable to reach Plaintiff, at the phone numbers on record with the Court. Attorney Zernich advised that Dad has not heard from Mom regarding the ticket purchase. Defendant/Dad has reached out and Mom has not responded. Further discussions and request made by counsel regarding reimbursement to Dad for the purchased tickets for 8-5-2-14 visits, reimbursement to Dad regarding \$500.00 out of pocket medical costs, reimbursement for Attorney Fees for counsel in Indiana, Attorney Fees for today's Hearing. FINDINGS MADE. COURT ORDERED the following: COURT NOTED, today is 5-18-15. Mom was to have the first half of the Summer Visitation. Based on their being no appearance by Plaintiff/Mom, COURT ORDERED, Unless Mom provides the travel tickets before the end of the Month, Mom's scheduled VISITATION shall be SUSPENDED. If that should happen, there shall be no further VISITATION with Mom, until Mom files a Motion. COURT CLARIFIED the ORDER of the COURT that CHILD EXCHANGES shall be at the airport, and the minor children shall be there for exchanges, at least two (2) hours before the flight leaves the airport. COURT FURTHER

ORDERED, if a party causes problems or delays during CHILD EXCHANGES, the delaying party shall be responsible for additional expenses related to the delay. COURT FURTHER ORDERED, the amount owed to Defendant/Dad of \$1,700.00 for reimbursement of past travel tickets, and the purchase of a rental car to pick up the minor children, shall be REDUCED TO JUDGEMENT. COURT FURTHER ORDERED, the amount of \$500.00 owed to Defendant/Dad for his one-half of out of pocket medical expenses shall be REDUCED TO JUDGEMENT. COURT FURTHER ORDERED, Defendant/Dad's award of Attorney Fees for the Indiana Attorney in the amount of \$1,800.00 shall be REDUCED TO JUDGEMENT. COURT Defendant/Dad's request for Attorney Fees for today's Hearing, GRANTED. Defendant/Dad is awarded ATTORNEY FEES in the amount of \$600.00 COURT FURTHER ORDERED, COURT FURTHER ORDERED, the parties shall not talk to the minor children regarding the litigation in Indiana or in Nevada, or be held in CONTEMPT. Sanctions shall apply for violations, which may include suspended VISITATION, fines, or other Sanctions. Attorney Zernich shall prepare the Order from today's Hearing.

Parties Present

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[Location : Family Courts](#) [Images Help](#)

REGISTER OF ACTIONS

CASE No. D-14-506417-D

Heather Lizares, Plaintiff vs. Baron Lizares, Defendant.

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§

Case Type: **Divorce - Complaint**
Subtype: **Complaint Subject Minor(s)**
Date Filed: **12/03/2014**
Location: **Department S**
Cross-Reference Case Number: **D506417**

PARTY INFORMATION

Defendant	Lizares, Baron 91 Autumn Day ST Henderson, NV 89012	Male 5' 5", 180 lbs	Lead Attorneys Pro Se
Plaintiff	Lizares, Heather 311 W Harris ST Eaton, IN 47338 Other Agency Numbers 2709978 Justice Court Scope ID Subject Identifier	Female 5' 1", 96 lbs	Pro Se
Subject Minor	Lizares, Kai Lee	Female	
Subject Minor	Lizares, Khloe Lynn	Female	

EVENTS & ORDERS OF THE COURT

04/09/2015 **Motion to Modify Visitation** (10:00 AM) (Judicial Officer Ochoa, Vincent)
Deft's Motion to Modify Visitation, for an Order that Pltf Appear to Show Cause that She Not Be Held in Contempt, for Reimbursements for Travel Expenses, Atty Fees, All Costs and Related Relief

Minutes

04/09/2015 10:00 AM

- DEFENDANT'S MOTION TO MODIFY VISITATION, FOR AN ORDER THAT PLAINTIFF APPEAR TO SHOW CAUSE THAT SHE NOT BE HELD IN CONTEMPT, FOR REIMBURSEMENTS FOR TRAVEL EXPENSES, ATTORNEY FEES, ALL COSTS AND RELATED RELIEF Plaintiff/Mom made TELEPHONIC APPEARANCE, from Eaton Indiana Defendant/Dad's family member present in the Court's gallery. Upon the Court's inquiry as to receiving service, Mom stated she received a large packet of papers of 300 or 400 pages, she contacted the Court and found there was a hearing. COURT ADVISED that the papers she received was the Motion filed by Defendant/Dad. Discussions between Court and Defendant/Dad regarding the child exchange procedure the parties follow. Further statements and allegations made by Dad regarding reimbursement of travel expenses, Mom's limited visitation and summer visitation, Mom having to come to Nevada for visitation based on the Indiana Judge's previous Order, Mom not returning the minor children timely, that the minor children are seeing therapist due being with Mom, therapist wanting a psychological evaluation, there being no correct address for Mom, and Mom using the Indiana Courts. Dad request Mom be held accountable to the Court's Orders, in following the visitation schedule. Statements by Mom regarding the allegations by Dad regarding taking sleeping medications for mosquito bites, and regarding the minor children being late

getting back to Nevada, as her sister took the minor children on the last day she had the minor children in her custody. Upon the Court's inquiry, Mom placed her address ON THE COURT'S RECORD. The address and phone number provided was verified by the Court's Odyssey records. COURT FINDS that it has personal and subject matter jurisdiction over the issues in this case. COURT FINDS and ORDERED, this Court has jurisdiction, and nothing is to be filed in Indiana, unless there is an emergency. COURT FURTHER ORDERED, going forward, Mom shall have the first half of the summer visitation each year. Mom shall file a copy of the purchased tickets for the minor children's travel by the end of May 2014, so the Court will know when the minor children are traveling to Indiana, and when they are returning to Nevada. Dad shall do the same. STATUS CHECK SET on 5/18/15 at 9:00 AM regarding the ticket information and travel times. COURT FURTHER ORDERED, the minor children shall be on the plane, on time coming back to Nevada, the Court will not accept any excuses. COURT REPREMANDED Mom for playing games with the Court's Orders. COURT FURTHER ORDERED, if something goes wrong in getting the minor children back to Nevada, Mom's Indiana visitations shall end. COURT FURTHER ORDERED, Mom shall not be allowed to exercise her visitation for the summer of 2015, if she has not provided her correct address and phone number to Dad. Mom provide her phone number ON THE RECORD. COURT FURTHER ORDERED, the parties shall keep each other apprised of any CHANGE in ADDRESS, TELEPHONE NUMBER, and EMPLOYMENT, ten days prior to making the change. In addition, the change in address and telephone number shall be filed with the Clerk's Office. COURT FURTHER ORDERED, when the minor children are with Dad, Mom may have TELEPHONE CONTACT with the minor children, on Tuesdays, and Thursdays, at 7:00 PM, Las Vegas time. Dad may SUPERVISE and RECORD the phone calls. If the phone calls are inappropriate, the phone calls will end. COURT FURTHER ORDERED, when the minor children are with Mom for Summer Visitation, Dad shall have TELEPHONE CONTACT with the minor children on Tuesdays and Thursdays at 7:00 PM, Indiana time. If there are no phone calls provided Dad, he may pick up the minor children from Summer Visitation with Mom, early. COURT FURTHER ORDERED, If the minor children get bites from insects, while in Indiana, Mom shall use a spray deterrent, and shall not use an oral deterrent, such as Benadryl, etc. Defendant's request for Attorney Fees, DENIED, as there was no Attorney retained in this matter. The Court's minutes shall suffice as the Order from today's Hearing. STATUS CHECK, SET on 5/18/15 at 9:00 AM. Mom may appear telephonically

Parties Present

Return to Register of Actions



STATE OF INDIANA)
)SS:
COUNTY OF DELAWRE)

IN THE DELAWARE CIRCUIT COURT NO. 5

2011 TERM

IN RE THE MARRIAGE OF:
HEATHER LIZARES,

CAUSE NO. 18C05-1007-DR-0101

Petitioner

D-14-506417-D

And

Dept. S

BARON LIZARES,

Respondent

DISSOLUTION DECREE

Comes now the Court, having taken the evidence in this matter under advisement, and the parties by counsel having submitted their respective proposed findings of fact and conclusions of law, and the Court having been duly advised in the premises now finds and order as follows:

1. Husband currently resides at 4047 Meadow Foxtail Dr., Las Vegas, Nevada. He avails himself to the jurisdiction of the Delaware County Circuit Court 5 and agrees the Court has jurisdiction over all matters within this cause of action.
2. Petitioner, Heather Lizares (hereinafter "Wife") currently resides in Delaware County and has for more than three (3) months and in the State of Indiana for more than six (6) months immediately preceding the date of the filing of this petition.
3. The parties were separated on or about June 25, 2009.
4. The marriage of the parties has suffered an irretrievable breakdown.
5. There were two children born of this marriage, Kai Lee Lizares, age six (6) and Khloe Lynn Lizares, age two (2).

6. Wife is not now pregnant.
7. The parties have personal property and debts to be divided.
8. The parties agree that the tangible personal property and personal belongings have already been divided and these items are not in dispute.
9. In order to equitably divide the remaining marital assets of the parties, the Court sets over from the Husband to the Wife by means of a Qualified Domestic Relations Order the sum of \$13,171.45 from the Vanguard retirement account. This represents one-half (1/2) of the balance on the date of separation. A copy of the retirement statement is attached hereto as Exhibit "A".
10. Husband currently has physical and legal custody of the minor children as agreed and provided for by the terms of the Agreed Provisional Order dated October 4, 2010. Both parties are seeking the physical custody of the children with Wife willing to share legal custody and with Husband also seeking sole legal custody.
11. Husband is a fit and proper person to have legal and physical custody of the children and it is in the children's best interests that they remain in the legal and physical custody of the Husband. Considering the factors listed in IC 31-17-2-8, for most of the children's lives they have resided in the Las Vegas, Nevada area; They have the majority of their extended family in Nevada; Kai has adjusted to school satisfactorily ; and there is adequate stability in care being provided in the Husbands home; and; Husband is able to meet the children's needs. Wife is currently relying on her immediate family for housing and financial support and is working through the relative early stages of substance abuse recovery through an outpatient community based program.
12. Wife shall be granted visitation pursuant to the Indiana Parenting Time Guidelines, with Section III of said guidelines being particularly applicable due to the significant geographical distance. Wife shall have daily phone contact with the children, with liberal parenting time granted when Wife travels to the Las Vegas area. Wife shall pay the transportation costs at the start of parenting time and Husband shall pay the transportation costs at the end of parenting time.

13. Husband earns gross income of \$1,320 per week, as shown by the attached Exhibit "B". Wife is employed part-time earning \$8.50 per hour, working 25 hours per week. Husband pays total health insurance premiums of \$315.20 per week, with one-half, or \$157.60 per week being allocated for the parties' two children. A child support worksheet is attached hereto as Exhibit "C".

14. Based on the financial status of the Husband and Wife, the Court finds the recommended child support to be inequitable. No child support shall be due from either party, pending a modification or revision based on changed circumstances pursuant to IC § 31-16-8-1.

15. Husband shall pay the Southwest gas bill of \$327.67 and the NVEnergy bill of \$356.17 and shall hold Wife harmless from any liability thereon.

16. The parties stipulate and agree that Wife has incurred approximately \$14,523.00 in unpaid medical expenses to various providers during their marriage. A copy of Wife's credit report detailing said expenses is attached hereto as Exhibit "D". Husband shall pay the sum of \$7250.00 to Wife within ninety (90) days of the date of this Order. After receipt of said payment, Wife shall hold Husband harmless from any liability thereon.

17. Due to the fact that Respondent has already paid \$1,500 toward Petitioner's attorneys' fees, each party should be responsible for the balance of their own attorneys' fees incurred in this action. The Court costs have been paid. The parties have complied with the provisional orders and those orders should be terminated as of the date of this Order.

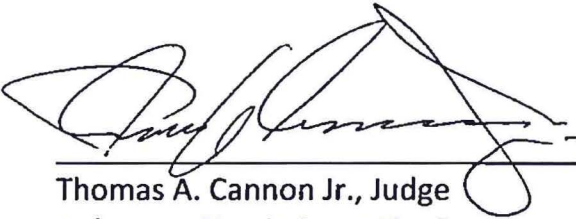
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. The marriage of Heather Lizares and Baron Lizares is dissolved.
2. Husband shall forward to Wife by Qualified Domestic Relations Order the sum of \$13, 171.45 from his Vanguard retirement account.
3. Husband shall retain physical and legal custody of the minor children.

4. Wife shall be granted parenting time according to the Indiana Parenting Time Guidelines; Section III, with liberal visitation parenting time when she visits the Las Vegas area.
5. Husband shall be responsible for maintaining health insurance and dental insurance on the parties' minor children, as long as it is reasonable available through his employer.
6. No child support shall be paid by either party. The Husband, as custodial parent and primary wage earner, shall provide all necessary support.
7. Husband shall pay the Southwest gas bill of \$327.67 and the NVEnergy bill of \$356.17 and shall hold Wife harmless from any liability thereon.
8. Husband shall pay Wife the amount of \$7,250.00 to be applied towards the payment of Wife's unpaid medical bills totaling \$14,523.00 within ninety (90) days of the date of this Order. After receipt of said payment, Wife shall hold Husband harmless from any liability thereon.
9. Each party shall pay his or her own attorneys' fees incurred in this action. The Court costs have been paid. The Provisional Orders are

hereby terminated.

Dated this 11th day of April, 2011.



Thomas A. Cannon Jr., Judge
Delaware Circuit Court No. 5

Distribution:

Kristin R. Willadsen, Attorney for Petitioner

Jon D. Madison, Attorney for Respondent