

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

IN THE MATTER OF THE PARENTAL
RIGHTS AS TO : A.D.L.; AND C.L.B., JR.,
Appellants,
vs.
CLARK COUNTY DEPARTMENT OF
FAMILY SERVICES, Respondent

No. 69047

Electronically Filed
Nov 06 2015 10:04 a.m.

DOCKETING STATEMENT
CIVIL APPEALS
Tracie K. Lindeman
Clerk of Supreme Court

Amended

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department D

County Clark Judge Robert Teuton

District Ct. Case No. D-11-446967-R

2. Attorney filing this docketing statement:

Attorney Deanna M. Molinar Telephone 702-455-2541

Firm Office of the Special Public Defender, Family Defense

Address 330 S. Third st., 8th Floor

Box 552316

Las Vegas, NV 89155

Client(s) Keaundra Deberry

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Ronald Cordes Telephone 702-455-5612

Firm Clark County District Attorney

Address 601 N. Pecos Rd.,

Bldg B, Rm 470

Las Vegas, NV 89101

Client(s) Department of Family Services

Attorney Christal Dixon Telephone 702-386-1070

Firm Children's Attorney Project

Address 725 E. Charleston Blvd.

Las Vegas, NV 89104

Client(s) Subject Minors

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
☐ Venue
☒ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

IN THE MATTER OF THE PARENTAL RIGHTS AS TO: A.D.L. AND C.L.B., JR., MINORS,
CASE NO. 63311

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Deberry, Keaundra

J-10-319959-P, Juvenile Dependency Court, Eighth Judicial District Court, remains open

In the matter of Parental Rights of: Aamiyah Lamb, Christopher Bynum, Jr., Minor(s)
D-11-446967-R, Eighth Judicial District Court, State's Petition to Terminate Parental
Rights Granted

8. Nature of the action. Briefly describe the nature of the action and the result below:

The State of Nevada petitioned the court to terminate the parental rights of Keaundra Deberry as to Aamiyah Lamb and Christopher Bynum, Jr. After a full trial, the court granted the state's petition on April 29, 2013. Ms. Deberry Appealed the Decision by the District Court. The matter was heard on oral argument by the Supreme Court of the State of Nevada and on December 11, 2014, the matter was remanded to the District Court. A subsequent hearing on remand was held, and the Court, again, granted the state's petition to terminate Ms. Deberry's parental rights on September 21, 2015.

9. Issues on appeal. State specifically all issues in this appeal (attach separate sheets as necessary):

1. Whether the District Court's decision to terminate Ms. Deberry's rights was supported by substantial evidence.
2. Whether the District Court erroneously found that the subject minor was physically abused based on the testimony of a doctor who had never personally examined the child or the child's injuries.
3. Whether the District Court's decision to terminate Ms. Deberry's parental rights based solely on her failure to admit to a crime is in violation of Ms. Deberry's Fifth Amendment Rights.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☒ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Trial. If this action proceeded to trial, how many days did the trial last? 2

Was it a bench or jury trial? Bench

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from Sep 21, 2015

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served Sep 22, 2015

Was service by:

☒ Delivery

☐ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed Oct 20, 2015

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
Joint Notice of Appeal filed on behalf of natural mother and subject minors.

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

A final judgment was entered terminating Ms. Deberry's parental rights over subject minors Aamiyah Lamb and Christopher Bynum. Ms. Deberry's contention is that the termination was granted without support by substantial evidence and in violation of her Fifth Amendment right against self-incrimination.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Keaundra Deberry, natural mother
Aamiyah Lamb, minor & Christopher Lamb, minor
Department of Family Services

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Keaundra Deberry & subject minors- Court's ruling was not supported by substantial evidence.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Keaundra Deberry

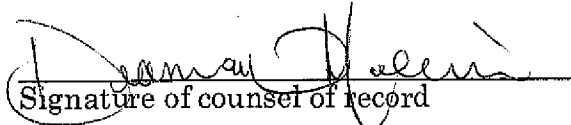
Name of appellant

Deanna M. Molinar

Name of counsel of record

Nov 5, 2015

Date


Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____, _____, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dated this _____ day of electronic service

Signature

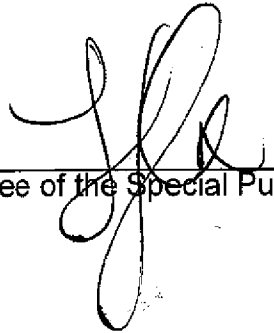
1 **AMENDED CERTIFICATE OF SERVICE**

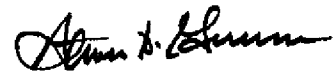
2 The undersigned does hereby certify that an electronic copy of the foregoing
3 DOCKETING STATEMENT was served as follows:

4
5 BY ELECTRONIC FILING TO

6 Ronald Cordes, Esq.
7 ronald.cordes@clarkcountyda.com

8 Crystal Dixon, Esq.
9 cdixon@lacsno.org

10
11 
12 An employee of the Special Public Defender Office
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CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

In the Matter of the Parental Rights as to:)
AAMIYAH DE'NASIA LAMB,) CASE NO. D 11446967 R
CHRISTOPHER LAMONT BYNUM, JR.,)
Minors.) DEPT. D

DECISION ON REMAND

This Court issued an Order terminating the parental rights of Joseph Lamb, Christopher Bynum and the natural mother, Keaundra Louise Deberry, as to minor children Aamiyah L. and Christopher B. on April 29, 2013. Natural mother, Keaundra Deberry, appealed. The Supreme Court reversed and remanded the matter for a new trial. In re Parental Rights as to A.L., 337 P.3d 758 (2014). The decisive issue on appeal was the exclusion of a medical report, offered by Ms. Deberry in the underlying juvenile proceeding, to rebut evidence by the Department that an injury suffered by Christopher B. was the result of intentional or negligent conduct by Ms. Deberry.

The matter came on calendar, following remand, on January 26, 2015, and a trial was set for March 10, 2015. Closing arguments were made on March 25, 2015, and the matter was taken under advisement. The Department of Family Services was

Non-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☒ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By ADR
Trial Dispositions:
☐ Disposed After Trial Start
☐ Judgment Reached by Trial

ROBERT W. TEUTON
DISTRICT JUDGE

FAMILY DIVISION, DEPT. D
LAS VEGAS NV 89101

1 present at these proceedings and represented by Chief Deputy District Attorney
2 Ronald Cordes. Natural mother was present March 10 (her presence on March 25
3 was waived by the Court) and was represented by Special Public Defender Deanna
4 Molinar and Chief Special Public Defender Melinda Simpkins. Additionally, Christal
5 Dixon, Esq., appointed after the remand to represent the minor children, was also
6 present.
7

8 The parties agreed that the only issue on remand was that of parental fault and
9 the only factual dispute to be resolved concerned the medical testimony and evidence.
10 Additionally, the parties stipulated that the portion of J-319959 that was admitted in
11 the first trial, the transcript of the first Termination Trial and the video of Dr. Mehte's
12 testimony from J-319959 proceeding, may be considered in this trial.
13

14 The Court heard testimony from Dr. Meha Mehte, the witness who had
15 testified in the previous Juvenile proceeding that the injury suffered by Christopher B.
16 was non-accidental the result of intentional or negligent conduct by Ms. Deberry. Dr.
17 Mehte obtained her Bachelor's degree from Emory University in 1991. She had a
18 scholarship to attend school in Scotland the year following her graduation from
19 Emory and then attended the Medical College of Georgia from 1992 to 1996. She did
20 her pediatric internship at the University of Kentucky from 1993 to 1996 and stayed
21 at the University an additional year as the primary pediatric resident. She then
22 worked at the Cincinnati Children's Hospital where she engaged in a fellowship
23 program training doctors in the evaluation of neglect, physical and sexual abuse of
24 children. The fellowship was comprised of six doctors who met weekly to review
25 cases as well as engage in literature review. She left the Cincinnati Children's
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1 Hospital to begin work at Sunrise Hospital in Las Vegas, Nevada. She was employed
2 at Sunrise Hospital in 2003 and worked for 9 ½ years as Medical Director of both the
3 Southern Nevada Child Abuse Assessment Center and Child Abuse at Sunrise
4 Hospital. Dr. Mehte has been employed for the past two years as the Medical
5 Director of the Aubrey Hepburn Care Program of the New Orleans Children's
6 Hospital in New Orleans, Louisiana. She testified that the program is a child abuse
7 evaluation program. While employed in Las Vegas she directly evaluated alleged
8 child abuse cases which presented at Sunrise Hospital. She also conducted
9 multidisciplinary reviews of suspected child abuse cases which presented at other
10 hospitals twice per month, which included meetings with child welfare agency
11 investigators and police officers. These reviews utilized photographs of child injuries
12 in lieu of direct physical examinations of the children. Dr. Mehte testified that her
13 standard procedure was to develop alternative theories for injuries and exclude them
14 before classifying a particular incident as caused by abuse or neglect. Dr. Mehte has
15 attended and presented at two national conferences on child neglect, physical and
16 sexual abuse in Huntsville, Alabama and San Diego, California. Additionally, she
17 attended and presented at an International child abuse conference in Sweden in the
18 fall of 2014. One of her presentations specifically concerned evaluation of burn
19 injuries of children to determine if the burns were accidental or intentional. She is an
20 Associate Professor at the Louisiana School of Medicine. She is certified by the
21 American Board of Pediatric Physicians in the specialty of child abuse and neglect.
22 She has testified in more than 50 trials involving child abuse and neglect. Dr. Mehte
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1 was recognized by the Court as an expert in the area of child abuse and neglect over
2 the objection of Ms. Deberry's counsel.
3

4 Dr. Mehte testified that the case involving Christopher B. was staffed with her
5 in 2010. She reviewed digital photographs that were taken sometime after the injury
6 had been sustained. She was told that the explanation given for the injury was that
7 the child had attempted to kiss an iron causing the injury. She found that the injury
8 pattern to the child's cheek was not consistent with the explanation provided. The
9 burn was described by her as being triangular in appearance. The burn itself was
10 throughout the triangle (that is, the burn was consistent with the entire surface of the
11 iron, and not just the edge, contacting the skin), that there was a sharp edged linear
12 mark to the face with no smearing of the burn. She testified that when a part of the
13 body approaches a hot object, such as an iron, upon touching the object the body
14 instinctively pulls away. This type of action commonly causes a linear imprint to the
15 flesh. In this case, the burn was to a curved part of the body (cheek). Had the burn
16 occurred by the iron falling there would have been smearing of the burn and not the
17 distinct linear outline that she observed. The distinct linear outline was the result of
18 the iron being applied with pressure to the cheek. She testified that a child would not
19 apply pressure because of the instinctive motion to withdraw or pull the iron away
20 from the face. Dr. Mehte testified regarding the degree of the burn. First degree
21 burns were described as only involving the epidermis, or the surface layer of the skin.
22 Second degree burns go through the epidermis and actually reach the dermis, the area
23 immediately below the epidermis. Second degree burns were described as causing
24 mild blistering or, if deeper penetration of the skin occurs, large blisters. Finally,
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1 third degree burns were described as burning all the way through the top two layers
2 and actually reaching the nerve area of the skin. She opined that the burn suffered by
3 Christopher B. was most definitely a second degree burn but she could not exclude
4 the possibility that it was a third degree burn. Dr. Mehte opined that, to a reasonable
5 degree of medical certainty, the injury was not caused by the child "kissing" the iron.
6 Although an accidental cause of the injury was possible she could not conceive of
7 such an explanation.
8

9
10 Ms. Deberry moved to introduce the written report from Dr. Neumann, the
11 Louisiana physician who examined Christopher B. in 2010. The four page report and
12 accompanying fax transmittal sheet dated March 24, 2010, was marked as
13 Respondent's exhibit A. The Department objected based on no evidentiary
14 foundation being established, the same objection that was made before the hearing
15 master. The Supreme Court stated, in the decision reversing this Court's order
16 terminating parental rights:

17 [Respondent] asserts that Dr. Neuman's report was improperly
18 excluded in the juvenile proceedings, leading the district court to find
19 abuse without hearing material rebuttal evidence. DFS does not
20 address [Respondent's] argument on appeal. We conclude ... that
21 DFS has confessed error on this issue.
22

23 337 P.3d 758, 762. This Court notes that, like the proceeding in the Juvenile case, no
24 evidentiary foundation has been established for admission of Dr. Neuman's report.
25 However, the law of the case doctrine mandates that the report be admitted into
26 evidence at this time. See Geissel v Galbraith, 105 Nev. 101, 103; 769 P.2d 1294,
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1 1296 (1989). Dr. Neuman's report, dated 5/11/10 and marked as Respondent
2 exhibit A, is therefore admitted. Dr. Neuman's report includes the following
3 information:
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5 III. History: Received a report stating that the child's father burned
6 him in the face with an iron.

7 IV. Looks like burn from hot iron tip; triangular shape. [This Court
8 notes that there is a portion of the report missing. That this is labeled
9 section IV is surmised from the preceding section being labeled
10 section III and the subsequent section being labeled section V]

11 V. Left cheek - 1 degree burn with iron approx. 1 month ago. Did not
12 go to Dr. treated with Neosporin ointment and cocoa butter
13

14 ...

15 VII Remarks and recommendations: Well healed burn scar on left
16 cheek 1 1/2 inch all 3 sides. No evidence of abuse. Child is happy,
17 playful and well adjusted.
18

19 This Court has reviewed the testimony of Dr. Mehtle and the medical record
20 from the physician in Louisiana who examined the child approximately 1 month after
21 the burn was inflicted. The Court finds Dr. Mehtle's testimony to be compelling.
22 Her credentials to form the medical opinion that this was a non-accidental injury are
23 overwhelming. The credentials of the Louisiana physician are unknown. Although
24 Dr. Mehtle was handicapped by the fact that the child was not personally examined
25 (he had been removed from the State shortly after the injury occurred), she
26 nevertheless testified to multiple, consistent facts (set forth, supra) which can only
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1 lead to the conclusion that the burn was intentional. The Court finds clear and
2 convincing evidence that the minor child was physically abused.
3

4 The Court has reviewed its prior decision that the parental rights of Keundra
5 Deberry be terminated and affirms that decision. The additional testimony received
6 concerning the injury to Christopher Bynum reaffirms the Court's finding that there
7 have been no behavioral changes of Keundra Deberry that would warrant return of
8 these children to her care. Ms. Deberry has continued to insist that the burn was
9 accidental in nature in spite of all physical evidence being to the contrary.
10

11 DATED this 21st day of September, 2015.

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14 ROBERT W. TEUTON
15 DISTRICT COURT JUDGE
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2 NEO

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**


CLERK OF THE COURT

3
4
5 In the Matter of the Parental Rights as to :

6 AAMIYAH DE'NASIA LAMB,
7 CHRISTOPHER LAMONT BYNUM,
8 JR.,

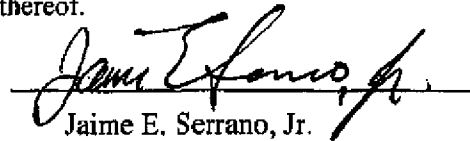
Minors.

CASE NO. D-11-446967-R
DEPT. D

9
10 **DECISION ON REMAND**

11 Please take notice that a DECISION ON REMAND was entered in the foregoing action
and the following is a true and correct copy thereof.

12 Dated: SEPTEMBER 21, 2015.


Jaime E. Serrano, Jr.
Law Clerk
Family Division, Department D

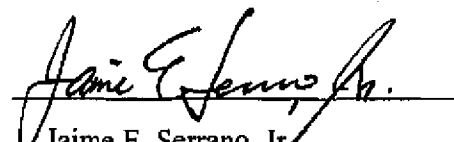
13
14
15
16 **CERTIFICATE OF SERVICE**

17 A copy of the foregoing DECISION ON REMAND was:
18 Placed in the attorney folders for the Plaintiff and Defendant and/or placed in the U.S.
19 Mail to the following persons:

20 **DDA Ron Cordes**
21 **Attorney for DFS**
22 601 S. Pecos Rd.
23 Las Vegas, NV 89101

SPD Deanna Molinar
Attorneys for Natural Mother, K. Deberry
330 S. Third St., 8th Floor
Las Vegas, NV 89155

24 **CHRISTAL DIXON, ESQ.**
25 **Attorney for the Minor Children**
26 725 E. Charleston Blvd.
27 Las Vegas, NV 89104


Jaime E. Serrano, Jr.
Law Clerk
Family Division, Department D

28
ROBERT W. TEUTON
DISTRICT JUDGE

FAMILY DIVISION, DEPT. D
LAS VEGAS NV 89101