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Tracie K. Lindeman
Clerk of Supreme Court

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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 SEAN ABID,

12 Plaintiff,

13 vs.

14 LYUDMYLA ABID,

15 Defendant.

CASE NO.: D-10-424830-Z

DEPT NO.: B

FAMILY DIVISION

17 **CASE APPEAL STATEMENT**

- 18 1. Name of appellant filing this case appeal statement: LYUDMYLA ABID.
- 19 2. Identify the judge issuing the decision, judgment, or order appealed from: HONORABLE
20 LINDA MARQUIS, Department B, Family Division, Eighth Judicial District Court
- 21 3. Identify all parties to the proceedings in the district court: Plaintiff, SEAN ABID, and
22 Defendant, LYUDMYLA ABID.
- 23 4. Identify all parties involved in the appeal: Plaintiff, SEAN ABID, and Defendant,
24 LYUDMYLA ABID.
- 25 5. Set forth the name, law firm, address, and telephone number of all counsel on appeal and
26 identify the party or parties whom they represent:
27
28

1 a. Radford J. Smith, Chartered
2 Radford J. Smith, Esq.
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4 2470 St. Rose Parkway, Suite 206
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8 Attorneys for Lyudmyla Abid

9 b. Black & LoBello
10 John D. Jones, Esq.
11 Nevada State Bar No. 006699
12 10777 West Twain Avenue, Suite 300
13 Las Vegas, Nevada 89135
14 Telephone: (702) 869-8801
15 Attorneys for Sean Abid

16 5. Identify whether any attorney identified above in response to question 3 or 4 is not licensed
17 to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear
18 under SCR 42 (attach a copy of any district court order granting such permission): None.

19 6. Indicate whether appellant was represented by appointed or retained counsel in the district
20 court: Appellant was represented by retained counsel.

21 7. Indicate whether Appellant is represented by appointed or retained counsel on appeal:
22 Appellant is represented by retained counsel.

23 8. Indicate whether Appellant was granted leave to proceed in forma pauperis, and the date
24 of entry of the district court granted such leave: None.

25 9. Indicate the date the proceedings commenced in the district court: A Joint Petition for
26 Summary Decree of Divorce was filed on February 4, 2010.

27 10. Provide a brief description of the nature of the action and result in the district court,
28 including the type of judgment or order being appealed and the relief granted by the district court:

1 This case involves Plaintiff, Sean Abid ("Sean")'s second attempt to modify custody of the parties'
2 now six-year-old son, Sasha Abid's ("Sasha"). Sean's attempt to modify custody and the expert report
3 upon which he relied, are primarily based upon an audio recording that Sean surreptitiously obtained by
4 placing a recording device into Sasha's school backpack. Without the consent of anyone who was residing
5 in Defendant, Lyudmyla Abid's (Lyuda) home, Sean placed the recording device in Sasha's backpack that
6 he knew would record conversations in Lyuda's home and vehicle.
7

8 Sean testified that he understood that Lyuda, her husband, Ricky Marquez ("Ricky"), and her
9 daughter Iryna (from a previous marriage), all resided in Lyuda's home. He further understood that the
10 recording would, for a period of 30 hours, record all conversations of any individual within recording
11 distance of the device in the backpack.
12

13 During the litigation, Sean did not produce the entirety of the two recordings that he secretly
14 recorded, and he later acknowledged that he destroyed and/or altered selected portions of the recordings,
15 he trashed the computer that housed them, and he trashed device used to record them. Instead, he
16 submitted, what he admitted are, selected portions of the recordings that he edited with software that he
17 could not identify, and that he erased from his computer.
18

19 Over Lyuda's objection, the Court permitted Sean to provide the surreptitiously obtained and
20 selectively altered recording to Dr. Stephanie Holland who conducted a child interview in the case. Dr.
21 Holland's report included a transcription of the tape and numerous references to the tape. The contents of
22 the tape formed the basis of the questions she asked in her interview of Sasha. Lyuda objected to the
23 admission of the recordings, and objected to the admission of any expert report that utilized the tapes as
24 all or part of its basis.
25

26 The Court held an Evidentiary Hearing on November 17, 2015, November 18, 2015 and November
27 19, 2015 on the issue of admissibility of the tapes. By Findings of Fact, Conclusions of Law and Decision
28

1 entered on January 5, 2016, the Court concluded that Sean's testimony was not credible and Sean did not
2 have good faith basis to place the recording device in Lyuda's home. Sean argued the doctrine of vicarious
3 consent. The Court found that the doctrine of vicarious consent does not extend to the facts presented in
4 this case and that Sean surreptitiously caused a recording device to be placed inside Lyuda's home. The
5 Court denied Sean's request to admit portions of the audio recording into evidence. By that Order,
6 however, the Court allowed Dr. Holland to testify regarding her expert opinion in the matter.
7

8 At the Evidentiary Hearing, Dr. Holland testified that if the tapes were found inadmissible and illegal
9 by the Court, then experts in her position would not have relied on such evidence. Further, she testified
10 that she did not have adequate basis to recommend a modification of custody. Dr. Holland's report also
11 indicated that given the scope of the ordered child interview, Lyuda and Sean were not evaluated and
12 therefore, definitive recommendations regarding custody were not requested by the Court as a result, Dr.
13 Holland did not offer any definitive recommendations.
14

15 By Findings of Fact, Conclusions of Law, and Decision entered on March 1, 2016, the Court
16 entered into an Order granting Sean's request to modify custody. The Court relied upon Dr. Holland's
17 testimony and report to form the basis of its order changing custody. The Court's findings did not
18 materially consider other evidence or testimony that was presented, including the testimony of Sasha's
19 two teachers, Ms. Susan Abacherli and Ms. Masa, who testified that Sasha is doing well in school and
20 does not have any behavioral problems and there was no evidence of any signs of alienation from his
21 father. The Court did not address the presumption that joint custody is in the best interest of the child
22 when the parties have previously agreed to joint custody. Lyuda appeals that Order.
23
24

25 11. Indicate whether the case has previously been the subject of an appeal to or original writ
26 proceeding in the Supreme Court and, if so, the caption and the Supreme Court docket number of the
27 prior proceedings: No.
28

1 12. Indicate whether this appeal involves child custody or visitation: Yes.

2 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

3
4 No.

5 DATED this 30th of March, 2016.

6 RADFORD J. SMITH, CHARTERED

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8 *Garima Varshney*
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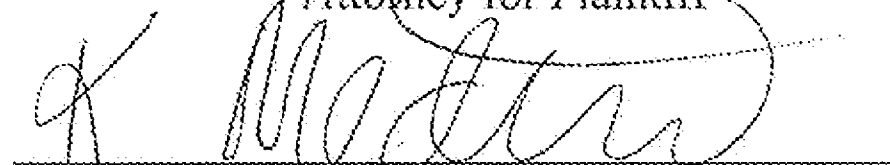
15 Email: rsmith@radfordsmith.com

16 Attorneys for Defendant, Lyudmyla Abid

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Radford J. Smith Chartered ("the Firm"). I am over the
3 age of 18 and not a party to the within action. I served the foregoing document described as "Case Appeal
4 Statement" on this 30 day of March, 2016, to all interested parties by way of the Eighth Judicial District
5 Court's electronic filing system.
6

7 John Jones, Esq.
8 10777 W. Twain Ave., #300
9 Las Vegas, Nevada 89135
10 Attorney for Plaintiff

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12 An employee of Radford J. Smith, Chartered
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