

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 LYUDMYLA ABID,

3 Appellant,

4 v.

5 SEAN ABID,

6 Respondent.

Supreme Court No. 69995
District Court Case No. D-19-424830-7
Electronically Filed
Aug 25 2016 02:42 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

7 **MOTION FOR PERMISSION TO FILE REPLY TO FAST TRACK RESPONSE,**
8 **AND TO FILE SUPPLEMENTAL APPENDIX**

9 Appellant, LYUDMYLA ABID (“Lyuda”) hereby moves for permission to file a
10 reply to the fast track response filed by Respondent, SEAN ABID (“Sean”) and for
11 permission to file supplemental appendix with the reply.

12 This is an appeal of the district court’s order permitting a court appointed expert to
13 admit a report and testify about audio tapes the district court found inadmissible and
14 illegally obtained and the trial court’s subsequent order, after the evidentiary hearing,
15 changing joint physical custody to primary physical custody based exclusively on the
16 contents of that report and testimony. This appeal is in the child custody fast track
17 program, pursuant to NRAP 3E. Respondent filed his fast track response on August 19,
18 2016. The response contains extensive arguments that have not previously been raised.

1 NRAP 3E does not provide for a reply to child custody fast track response. This Court
2 may, however, grant permission for such a reply. *See* NRAP 2.
3

4 This appeal presents two issues of first impression that could greatly affect the
5 actions of parents in custody actions by encouraging the surreptitious and otherwise illegal
6 taping of conversations between third parties and a child. Here, the district court adopted
7 a doctrine not previously addressed in Nevada, the “vicarious consent” doctrine, allowing
8 the otherwise illegal taping of children’s conversations with other individuals without the
9 child or the other individuals consent. Further, in this case, though the district court found
10 that Sean had not shown a basis to apply the vicarious consent doctrine, the content of the
11 illegally obtained tapes would be permitted (in violation of the express provisions of NRS
12 200.650) to be disseminated to an expert, quoted by the expert in a written report that was
13 admitted into evidence, and testified about by the expert. The district court ruling arises
14 from the notion that an expert may rely upon “anything,” even inadmissible evidence.
15 Such a ruling would encourage others to present surreptitiously and illegally obtained
16 recordings to experts with the knowledge that they could be used for advantage in a
17 custody action (or any lawsuit). Such a ruling undermines a basic constitutional right of
18 privacy ensured by Nevada statute. The issues presented in this appeal are complex and
19 Lyuda requests that she be permitted to file a reply to Sean’s response because the
20 admission of tapes obtained in such a manner will affect the privacy of individuals in the
21 State of Nevada.
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1 In his response, Sean argues that the district court should have admitted the
2 recordings. That issue has already been addressed in orders from the district court and has
3 not been challenged by Sean on cross-appeal.
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5 Lyuda respectfully contends that she should be given the opportunity to file a short
6 reply, with a limited supplemental appendix to provide the court with more complete and
7 accurate information for the Court's determination of any issues raised in this appeal.
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9 This motion is being submitted in good faith, and without the intent to cause undue
10 delay in the appeal.
11

12 Dated this 25th day of August, 2016.
13

14 RADFORD J. SMITH, CHARTERED

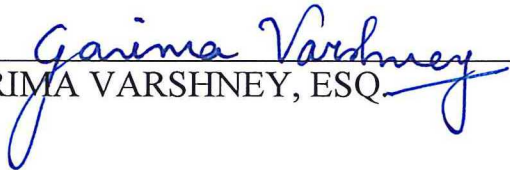
15 
16 RADFORD J. SMITH, ESQ.
17 Nevada State Bar No. 002791
18 GARIMA VARSHNEY, ESQ.
19 Nevada State Bar No. 011878
20 2470 St. Rose Parkway, Suite 206
21 Henderson, Nevada 89074
22 *Attorney for Appellant*
23
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CERTIFICATE OF SERVICE

I certify that on the 25th day of August, 2016, I served a copy of this MOTION FOR PERMISSION TO FILE REPLY TO FAST TRACK RESPONSE, AND TO FILE SUPPLEMENTAL APPENDIX upon all counsel of record by mailing it by first class mail with sufficient postage prepaid to the following address:

John Jones, Esq.
10777 W. Twain Ave., #300
Las Vegas, Nevada 89135
Attorney for Respondent



GARIMA VARSHNEY, ESQ.