

IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA LYNN NANCE,

Appellant,

v.

CHRISTOPHER MICHAEL
FERRARO,

Respondent.

Electronically Filed
May 15 2017 08:55 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.: 72454

District Court No.: D426817

**APPELLANT'S MOTION TO FILE CONFIDENTIAL REPORT UNDER
SEAL OR IN THE ALTERNATIVE FOR AN ORDER DIRECTING THE
DISTRICT COURT CLERK TO TRANSMIT A COPY OF
CONFIDENTIAL REPORT TO THE CLERK OF THE SUPREME COURT**

COMES NOW, Appellant Sandra Lynn Nance, by and through her attorney of record, Emily McFarling, Esq. of McFarling Law Group, and hereby requests that the Court issue an Order allowing Appellant to file a Confidential Report under Seal, as part of Appellant's Appendix, or in the Alternative for an Order Directing the District Court Clerk to Transmit a Copy of Confidential Report to the Clerk of the Supreme Court. This Motion is based upon the Memorandum of Points and Authorities, Declaration of Emily McFarling, Esq. and all other papers and pleadings on file herein.

DATED this 12th day of May, 2017.

MCFARLING LAW GROUP

By: /s/ Emily McFarling
Emily McFarling, Esq.
Nevada Bar No. 8567
6230 W. Desert Inn Road
Las Vegas, NV 89146

FACTUAL BACKGROUND

Appellant Sandra Nance filed her Fast Track Statement on May 9, 2017 in this case. An essential element of her appeal is the district court precluding evidence prior to the last custodial order. One specific piece of barred evidence was a custody evaluation, that included a psychological evaluation of the parties, previously done by Dr. John Paglini. Dr. Paglini's report is in the district court's confidential file and is also marked confidential with instructions not to release to litigants.

To demonstrate to this Court the relevance of this report and the evidence excluded, it was necessary for Sandra to cite to its contents in her brief, as well as include the report in her appendix. However, because of the confidential nature of the report, Sandra only earmarked the report in her appendix and did not actually include it. It is earmarked as AA00097-00180 in Volume 1 of her appendix.

A district court must consider the mental and physical health of the parties when making a custody determination.¹

¹ NRS 125C.0035(4)(f).

MEMORANDUM OF POINTS AND AUTHORITIES

Nevada Rules of Appellate Procedure provides that because of the confidential nature of presentence reports in criminal cases, they shall not be included in an appendix and instead must be filed under seal but only after the party files a motion and gets permission to include the report in his appendix.² There is no specific appellate rule on similar confidential documents such as a custody evaluation which contains psychological evaluations.

Because the custody evaluation contains information and diagnosis of the mental health of both parties, and the mental health of the parties must be considered by the district court in a custody decision, Dr. Paglini's report is essential to Sandra's appeal and therefore should be filed under seal for consideration by the Appellate Court.

DATED this 12th day of May, 2017.

McFARLING LAW GROUP

By: /s/ Emily McFarling
Emily McFarling, Esq.
Nevada Bar No. 8567
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
Attorney for Appellant,
Sandra Lynn Nance

² NRAP 30(6).

DECLARATION OF EMILY MCFARLING, ESQ.

I, Emily McFarling, Esq., declare under penalty of perjury under the laws of the State of Nevada that the following is true and correct:

1. I represent the Appellant in the above-entitled case.
2. I have read the attached motion and know the contents thereof; the same is true of my own knowledge, except for those matters stated upon information and belief and, as to those matters, I believe them to be true.
3. I further submit this Motion is filed in good faith, that the filing of Dr. Paglini's report is necessary for the appeal.

I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 USC § 1746), that the foregoing is true and correct.

DATED this 12th day of May, 2017.

By: /s/ Emily McFarling
Emily McFarling, Esq.

CERTIFICATE OF SERVICE

The undersigned, an employee of McFarling Law Group, hereby certifies that on the 12th day of May, 2017, I served a true and correct copy of Motion to File Confidential Report Under Seal or in the Alternative to Direct the District Court Clerk to Transmit a Copy of the Confidential Report to the Clerk of the Supreme Court, via the Court's electronic filing and service system (eFlex):

Shannon R. Wilson, Esq.
Peccole Professional Park
10080 W. Alta Drive, Ste. 200
Las Vegas, NV 89145
Attorney for Respondent

By: /s/ Maria Rios Landin
Maria Rios Landin