

IN THE SUPREME COURT OF THE STATE OF NEVADA

RENELYN BAUTISTA ) No.: 72713

Appellant )

vs. )

District Court No. : D-14-495928-1  
Electronically Filed  
Aug 21 2017 02:37 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

JAMES PICONE, ) CHILD CUSTODY FAST TRACK RESPONSE

Respondent )

---

1. NAME OF PARTY FILING THIS FAST TRACK RESPONSE:

JAMES PICONE

2. NAME, LAW FIRM, ADDRESS, AND TELEPHONE NUMBER OF

ATTORNEY SUBMITTING THIS FAST TRACK RESPONSE:

BENJAMIN B. CHILDS, ESQ.

Nevada Bar No: 3946

318 S. Maryland Parkway

Las Vegas, Nevada 89101

(702) 385-3865

3. PROCEEDINGS RAISING SAME ISSUES: None.

///

1 4. PROCEDURAL HISTORY :

2  
3  
4 A. BASIS OF MOTIONS FOR SEPTEMBER 16, 2016 HEARING

5  
6 The minor child in this case is Sophia Picone DOB 10/22/2011.

7  
8 The motions which were heard at the September 16, 2016 hearing were  
9 initiated on August 17, 2015 by Renelyn in a Motion for Reconsideration. Judge  
10 Harter wanted to make a record to support his rulings.

11  
12 The August 17, 2015 motion [AA 98 - 104] mentions nothing about Sophia  
13 revealing “to her grandmother that the Respondent [James] had penetrated her  
14 vagina with his finger.” [Opening Brief 3] This outrageous allegation was proven  
15 to be a desperate fabrication by Renelyn. In fact, Renelyn’s counsel was  
16 accurately predicting Judge Harter’s future decision. The Motion states that she  
17 “would never want the Court to have the impression that CPS was being used to  
18 bolster a case.” [AA 101:10] Yet, Renelyn has continued to do just that in the  
19 portion of Opening Brief cited above; in fact, this is the entire basis of her appeal.  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 B. RECORD AT THE SEPTEMBER 16, 2015 HEARING

2  
3 The September 16, 2015 hearing contained testimony from Dr. Paglini, who  
4 the court had designated to do an assessment. Dr. Paglini testified that James was  
5  
6 “very cooperative and invested”, “[h]e was involved in the interviews. He did  
7  
8 the psych testing. We even did a home visit. Everything was fine in the home  
9  
10 visit. He was eager to complete evaluation.” [AA 359:12-18] He further “noted  
11 Mr. Picone was very cooperative.” [AA 360:13]

12 Dr. Paglini conducted a procedural meeting with Renelyn and her husband,  
13  
14 Mr. Schramm. Then he saw Renelyn “for a clinical interview and psych testing.  
15  
16 But ... there was no additional contact from her but contact from Mr. Schramm.”  
17  
18 [AA 359:20-23] Dr. Paglini stated that Mr. Schramm “would say things that this  
19  
20 custody evaluation was not authorized. And he would make other statements that  
21  
22 were untrue. And I tried to correct him several times.” [AA 359:24 - 360:2]

23 Henderson Police Department, Special Victims Unit, Detective Arndt  
24 testified at the September 16, 2015 hearing regarding allegations of sexual abuse  
25  
26 initiated by Mr. Schramm. [AA 371:8-11] There was an investigation, including a  
27  
28

1 physical examination of Sophia at the hospital. The report was that Sophia had  
2 some oral sores and other conditions that “were not related to sexual abuse.” [AA  
3 365:8] “[t]here was no scarring or injury or trauma to the outer genitalia. So  
4 without that, that would be suggesting that there’s none inside.” [AA 365:21-23]  
5  
6 It was noted that Sophia was born with a medical condition which was observed in  
7 Sophia’s medical examination, known as labial fusion. [AA 372:21]  
8  
9

10  
11 Det. Arndt did not instruct Renelyn “not to turn the child over to” James  
12 [AA 366:9-12], instead on August 27, 2015, she made it “very clear, too, that  
13 because there was a custody order ... that if there was a custody order in place,  
14 they would need to answer for any violation of that order ... And we don’t get  
15 involved in custody issues.” [AA 366:23 - 367:5] She stated that James “has  
16 actually been very cooperative, called me – returned my phone call for an  
17 interview.” [AA 370:24-25]  
18  
19  
20  
21

22 The allegations of sexual abuse on 3 year old Sophia initiated by Mr.  
23 Schramm were made within two weeks of the Court denying Renelyn’s “most  
24 recent request to change custody” after Renelyn’s barrage of motion to try to  
25  
26  
27  
28

1 change from a joint custody arrangement. None of this which was conveyed to  
2  
3 Det. Arndt. [AA 373:9-17]

4 It was affirmed by the Court that there is “nothing happening on the CPS  
5  
6 end.” [AA 367:16 and 20-21]

7  
8  
9 C. FEBRUARY 17, 2017 MOTION

10  
11 As set forth in the Order filed February 22, 2017, Renelyn continued filing  
12  
13 of baseless motions. There was NO “concrete proof” [Opening Brief 6] of  
14  
15 Renelyn’s allegations. In fact, her allegations are fabrications by Renelyn, or more  
16  
17 likely it appears her new husband, Mr. Schramm. Judge Harter rightfully called  
18  
19 out the lack of evidence supporting her allegations, despite multiple  
20  
21 investigations, in his written order. [AA 471:8]

22 5. STATEMENT OF FACTS :

23  
24 Nothing to add. Facts are addressed in the procedural history. James has  
25  
26 noted his disputes with Renelyn’s statements above.

1 6. ISSUES ON APPEAL :

2  
3  
4 Unfortunately, sexual abuse has become a routine, go-to allegation against  
5  
6 a single father in modern custody litigation. Judge Harter called out Renelyn for  
7  
8 her fabrication by correctly instructing her that, if the allegations were factual,  
9  
10 there are multiple public resources to investigate. She, through her husband Mr.  
11  
12 Schramm, had availed herself of every possible government agency to investigate  
13  
14 her allegations. As Judge Harter pointed out in his written order [AA 469-473],  
15  
16 Renelyn needs to stop wasting court resources, continuing through the instant  
17  
18 appeal.

19 For the Court's convenience, the relevant portion of the Order on appeal is  
20  
21 set forth below. (AA 470 - 471, emphasis in original)

22 Defendant's newest of allegations regarding Plaintiff's  
23 involvement with a minor makes no mention whatsoever of what  
24 Defendant is doing to have this investigated by *the proper authorities*  
25 (FBI, police, CPS, etc.), even though it "rises to the level of an  
26 emergency." Defendant laments in her motion that "if [only] a  
27 forensic interviewer were to interview [Plaintiff's witness]." All 3 of

1 the aforementioned agencies have such persons on staff, and neither  
2 party will have to come out-of-pocket for such an investigation!  
3 Certainly, Defendant should know by now there are other legal  
4 avenues for investigation of Plaintiffs alleged criminal behavior than  
5 simply to continue to petition Family Court. The fact that these  
6 agencies *also* employ a lesser standard of legal proof has already been  
7 noted before in this case. As Defendant was also previously informed,  
8 it is actually a crime for Defendant *not* to report any wrongdoing that  
9 would put the minor child in an alleged dangerous situation.' Also,  
10 Defendant has been notified before that CPS can place the child with  
11 her on an emergency basis *at anytime*. On this note, it is a bit  
12 hypocritical that Defendant notes Plaintiff made an *unsubstantiated*  
13 CPS claim against her husband. Two more rhetorical questions are  
14 posed. Did Defendant not do the *exact* same thing to Plaintiff? Also,  
15 assuming Defendant's allegations are true, does she not have *unclean*  
16 *hands* by not mandatorily reporting the serious (or in her term  
17 "emergency") matter to the proper authorities? 4

18 -----  
19 3 NRS 200.508(2), which incorporates NRS 432B.130.

20 4 "He who comes into court must do so with clean hands. The clean  
21 hands rule is of ancient origin and given broad application. It is the  
22 most important rule affecting the administration of justice." Padgett v.  
23 Padgett, 199 Cal.App.2d 652, 656 (1962); Lamb v. Lamb, 83 Nev.  
24 425, 433 P.2d 265 (1967).

25  
26 ///

1 The only issue on appeal is if Judge Harter abused his discretion by not  
2 holding a hearing on Renelyn’s motion to modify custody of Sophia.  
3

4  
5  
6 7. LEGAL ARGUMENT, INCLUDING AUTHORITIES:  
7

8  
9 The Court itself provided the relevant legal authority in a footnote to it’s  
10 February 22, 2017 Order. Rooney v. Rooney, 109 Nev. 540, 542, 853 P.2d 123  
11 (1993) ( “[A] district court has the discretion to deny a motion to modify custody  
12 without holding a hearing unless the moving party demonstrates *adequate cause*  
13 for holding a hearing.”) [AA 469:28, emphasis in the Court’s footnote]  
14

15  
16 Further, the February 22, 2017 Order noted the higher standard than best  
17 interest of the child standard when the joint physical custody is by agreement of  
18 the parents, under Mizrachi v. Mizrachi, 132 Nev. \_\_\_, 385 P.3d 982 (Nev. Ct.  
19 App. 2016). The higher burden authorized court action only “**when severe**  
20 **concerns, such as protecting a fundamental right or the safety of the parties’s**  
21 **child are at stake.**” [AA 472:1-4, emphasis in original]  
22  
23  
24  
25  
26  
27  
28



1 Renelyn's abuse of discretion argument is unsupported by the facts. Judge  
2 Harter correctly notes in his Order the necessity for the Rooney doctrine based on  
3 the reality of the court having to allocate scarce judicial resources, not to mention  
4 the toll motion hearing take on the litigants.  
5  
6

7  
8  
9 **RENELYN HAS NO CREDIBILITY**  
10

11 Renelyn's lack of credibility is further amplified by false statements, signed  
12 by her under penalty of perjury, in her Financial Disclosure Form [the FDF] filed  
13 by her counsel on April 6, 2016. [AA 380 - 386]  
14  
15

16 The Court should note that somehow Renelyn affords to hire expensive  
17 legal counsel and pay filing fees and costs for her repetitive motions, when she has  
18 -0- income. According to the FDF, which has never been updated, she is not  
19 disabled, but does not work and has no income despite having a college education.  
20  
21 She receives no contribution from her current husband. Yet, she pays \$980  
22 monthly living expenses on herself. Plus she spends an additional total of \$1,350  
23  
24 a month on each child, which amount includes \$600 for cellular phones (including  
25  
26  
27  
28

1 an infant) and \$750 per month on food, She has a \$150 monthly credit card  
2 payment, but reports no credit card debt.  
3

4 Meanwhile, James works to support himself and his daughter. He has no  
5 extra money and is represented in this appeal by counsel through Legal Aid.  
6 Judge Harter's Order calls out Renelyn's continual "cries of being a pauper status,  
7 yet she wants the *costly* process of an *evidentiary hearing*?" [ AA 472:7]  
8  
9

10  
11 The point being that Renelyn is willfully unemployed, hiding her and her  
12 current husband's income, and lying about her income and expenses. All while  
13 wasting the Court's time with unfounded motions based on the wildest, most  
14 despicable false allegations imaginable involving a three year old.  
15  
16  
17  
18

## 19 CONCLUSION

20  
21

22 The appeal should be summarily dismissed and the decisions on appeal  
23 affirmed. The Court should consider issuing a published opinion reiterating that  
24 this Court defers to discretionary decisions of the district court on whether  
25  
26  
27  
28

1 adequate cause has been presented to require a hearing in custody cases.

2 Repetitive filings and attempts to relitigate final decisions unnecessarily strain

3  
4 judicial resources which are limited by both budgetary and human resource

5  
6 constraints. Frivolous motions also deprive citizens with real conflicts of access

7  
8 to judicial resources.

9  
10  
11 VERIFICATION

12 1. I hereby certify that this fast track response complies with the formatting

13  
14 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and

15  
16 the type style requirements of NRAP 32(a)(6) because:

17 [xx ] This fast track response has been prepared in a proportionally spaced

18  
19 typeface using Wordperfect in font size 14, Times New Roman type style.

20  
21 2. I further certify that this fast track response complies with the page- or

22  
23 type-volume limitations of NRAP 3E(e)(2) because it is :

24 [xx ] Proportionately spaced, has a typeface of 14 points or more, and contains

25  
26 1,848 words.

1 3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a  
2 fast track response and that the Supreme Court of Nevada may impose sanctions  
3 for failing to timely file a fast track response. I therefore certify that the  
4 information provided in this fast track response is true and complete to the best of  
5 my knowledge, information, and belief.  
6  
7  
8  
9  
10

11 /s/ Benjamin B. Childs

12 \_\_\_\_\_  
13 BENJAMIN B. CHILDS, ESQ.  
14 Nevada Bar No. 3946  
15 318 S. Maryland Parkway  
16 Las Vegas, Nevada 89101  
17 (702) 385-3865  
18 Attorney for Respondent  
19 James Picone

#### 20 CERTIFICATE OF SERVICE

21 This fast track response is served through the Supreme Court Electronic  
22 Filing System to Appellants's counsel, John Jones. Electronic service on Mr.  
23 Jones is in lieu of mailing.

24 /s/ Benjamin B. Childs

25 \_\_\_\_\_  
26 BENJAMIN B. CHILDS, ESQ.  
27 Nevada Bar # 3946  
28