

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

2
3
4 KIRK ROSS HARRISON,

5 Appellant,

6
7
8 v.

9 VIVIAN MARIE LEE HARRISON,

10 Respondent.
11
12
13

Electronically Filed
Aug 31 2017 10:39 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No. 72880
District Court Case No. D443611

14 **MOTION TO DISMISS APPEAL**
15 **MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRAP 38**

16 Respondent VIVIAN LEE HARRISON ("Vivian") moves this Court for its Order
17 dismissing Appellant's Appeal.
18

19 **I.**

20 **INTRODUCTION**

21
22 The parties signed a stipulated Parenting Plan that was entered as an Order of the
23 District Court, Judge Bryce Duckworth, on July 7, 2012. At that time, the parties had two
24 minor daughters, Brooke and Rylee. Brooke emancipated on her 18th birthday on June 26,
25 2017, and is thus no longer subject to the jurisdiction of the district court.
26

27 The Parenting Plan was incorporated into the parties' Decree of Divorce filed
28 October 31, 2013. The parenting plan granted the parties' daughters a limited right to

1 change non-holiday visitation “from time to time.” Each party also had the ability to seek
2 Court intervention if the children’s use of the teenage discretion provision unduly eroded a
3 party’s time with them.
4

5 Though Kirk had agreed that the provisions contained in the Parenting Plan were in
6 the best interest of the children, he filed three separate post-trial motions designed to vacate
7 or undermine the “teenage discretion” provision. The district court, Judge Bryce
8 Duckworth, denied all of those motions, and for the last motion, granted Vivian sanctions
9 against Kirk; Kirk appealed. On July 26, 2016, this Court entered its opinion in *Harrison*
10 *v. Harrison*, 376 P.3d 173 (2016), affirming the Order of the district court. In relevant
11 part, the Court found that the “teenage discretion” provision was not against public policy
12 or Nevada law, had been agreed to by the parties, and was within the discretion of the
13 District Court to enforce. *Id.* at 177.
14
15
16
17

18 On December 29, 2016, Kirk again filed a Motion in the district court requesting, in
19 part, that the Court invalidate the teenage discretion provision. By Order filed March 15,
20 2017, the district court, after addressing the findings in the *Harrison* decision, held:
21

22 Given the frequency at which the issue of teenage discretion has been
23 litigated, the temptation exists for this Court to simply eliminate the
24 provision. Indeed, the Court questioned [Vivian] at the February 1, 2017
25 hearing as to whether it might be worth eliminating teenage discretion to
26 minimize the seemingly endless litigation. [. . .] [T]his Court is not inclined
27 to entertain a request to eliminate the teenage discretion provision when the
28 parties are not abiding by the terms of the Order for Appointment of
Parenting Coordinator (October 29, 2013). The parties’ daughter, Rylee,
attained the age upon which the teenage discretion provision is triggered.

1 The facts cited by Plaintiff in his papers are not sufficient for this Court to
2 yet again revisit or strike this provision and his request should be denied.

3 On April 14, 2017, Appellant filed his Notice of Appeal of Judge Duckworth's
4 March 15, 2017 Order, and on May 12, 2017 filed his Docketing Statement. In that
5 Docketing Statement he identifies the following as the Issues on Appeal: "Whether the
6 district court erred in its rulings dealing with the custody issue of teenage discretion."
7
8 *Docketing Statement*, page 4, paragraph 9.

10 II.

11 **KIRK'S APPEAL IS PRECLUDED BY THE DOCTRINE OF LAW OF THE CASE** 12 **DOCTRINE, AND IS MOOT**

13
14 This Court has already ruled that the district court may uphold the teenage discretion
15 provision. As a result, under the "law of the case" doctrine, Kirk cannot challenge whether
16 district court has discretion to uphold the provision, nor can he argue that the provision is
17 against public policy.

18
19 [W]here an appellate court deciding an appeal states a principal [sic] or rule
20 of law, necessary to the decision, the principle or rule becomes the law of
21 the case and must be adhered to throughout its subsequent progress both in
22 the lower court and upon subsequent appeal.

23 *See Board of Gallery of History Inc. v. Datecs Corporation*, 116 Nev. 286, 289, 994 P.2d
24 1149, 1150 (2000) *quoting*, *LoBue v. State ex rel. Department of Highways*, 92 Nev. 529,
25 532, 554 P.2d 258, 260 (1976); *Wickliffe v. Sunrise Hospital*, 104 Nev. 777, 780, 766 P.2d
26 1322, 1324 (1988); *see also Emeterio v. Clint Hurt and Assocs.*, 114 Nev. 1031, 1034, 967
27 P.2d 432, 434 (1998) (stating that "[w]hen an appellate court states a rule of law necessary
28

1 to a decision, that rule becomes the law of the case and must be followed throughout
2 subsequent proceedings"); *Geissel v. Galbraith*, 105 Nev. 101, 103, 769 P.2d 1294, 1296
3 (1989); *Sherman Gardens Co. v. Longley*, 87 Nev. 558, 563, 491 P.2d 48, 51
4 (1971) (noting that "[t]he decision (on the first appeal) is the law of the case, not only
5 binding on the parties and their privies, but on the court below and on this court itself"
6 (quoting *Wright v. Carson Water Co.*, 22 Nev. 304, 308, 39 P. 872, 873-74 (1895))). The
7 law of the case doctrine "is designed to ensure judicial consistency and to prevent the
8 reconsideration, during the course of a single continuous lawsuit, of those decisions which
9 are intended to put a particular matter to rest." See *U.S. v. Real Property Located at Incline*
10 *Village*, 976 F. Supp. 1327, 1353 (D. Nev. 1997). The law of the case doctrine, therefore,
11 serves important policy considerations, including judicial consistency, finality, and
12 protection of the court's integrity. See *Tien Fu Hsu v. Cnty. of Clark*, 123 Nev. at 633, 173
13 P.3d at 730. (2007).

14
15 Brooke emancipated during the time of this appeal. Thus, any claim regarding the
16 district court's decision in relation to Brooke is moot. In *National Collegiate Athletic*
17 *Association v. University of Nevada*, 97 Nev. 56, 58, 624 P.2d 10, 11 (1981) the Nevada
18 Supreme Court held:

19
20 This court has frequently refused to determine questions presented in purely
21 moot cases. Cases presenting real controversies at the time of their
22 institution may become moot by the happening of subsequent events. A
23 moot case is one which seeks to determine an abstract question which does
24 not rest upon existing facts or rights. *Id.*

1 Kirk's motion, filed December 29, 2016, could not be related to any action by Rylee since
2 she was not yet 14. Judge Duckworth correctly held in his March 17, 2017 order:
3

4 The parties' daughter, Rylee, attained the age of 14 on January 24, 2017,
5 thus triggering the teenage discretion provision. At the time Plaintiff filed
6 his motion, Rylee had not attained the age upon which the teenage discretion
7 provision is triggered. The facts cited by Plaintiff in his papers are not
8 sufficient for this Court to yet again revisit or strike this provision and his
9 request should be denied.

10 See Order filed on March 17, 2017, page 5.

11 III.

12 RESPONDENT SHOULD BE AWARDED ATTORNEY'S FEES PURSUANT TO 13 NRAP 38

14 NRAP 38 states,

15 (a) **Frivolous Appeals; Costs.** If the Supreme Court determines that
16 an appeal is frivolous, it may impose monetary sanctions.

17 (b) **Frivolous Appeals; Attorney Fees as Costs.** When an appeal has
18 frivolously been taken or been processed in a frivolous manner; when
19 circumstances indicate that an appeal has been taken or processed solely for
20 purposes of delay, when an appeal has been occasioned through
21 respondent's imposition on the court below; or whenever the appellate
22 processes of the court have otherwise been misused, the court may, on its
23 own motion, require the offending party to pay, as costs on appeal, such
24 attorney fees as it deems appropriate to discourage like conduct in the
25 future.

26 The present appeal is Kirk's third appeal. He was unsuccessful in his last two
27 appeals. The present appeal should be denied based upon the law of the case in Kirk's
28 previous appeal, Nevada Supreme Court Case No. 66157. Kirk has unnecessarily

1 multiplied the proceedings in this manner by filing a frivolous appeal. *See* Order of
2 Affirmance filed July 28, 2016 in Appeal Number 66157.
3

4 Now, Kirk has yet again filed another meritless appeal. Unless Kirk is sanctioned
5 for filing multiple frivolous pleadings, he will continue to do so. Vivian requests Kirk be
6 sanctioned pursuant to NRAP 38 and that she be granted an award of attorney's fees and
7 costs.
8

9
10 IV.

11 CONCLUSION

12 Based on the foregoing, Respondent, Vivian Marie Lee Harrison, requests this
13 Court enter its order granting the following relief:
14

- 15 1. Dismissing the appeal in its entirety;
- 16 2. Sanctioning Appellant for a frivolous appeal pursuant to NRAP 38 and an
17 award of attorney's fees and costs for Vivian; and,
18
- 19 3. For such other and further relief as the Court may deem proper.
20

21 Dated this 31st day of August 2017.

22 RADFORD J. SMITH, CHARTERED

23
24 
25 RADFORD J. SMITH, ESQ.

26 Nevada Bar No. 002791

27 GARIMA VARSHNEY, ESQ.

28 Nevada Bar No. 011898

2470 St. Rose Pkwy – Suite 206

Henderson, Nevada 89074

Attorneys for Vivian Harrison