

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRK ROSS HARRISON,)
Appellant,)
)
vs.)
)
VIVIAN MARIE LEE HARRISON)
Respondent.)
)
)
_____)

No. 72880

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CHILD CUSTODY FAST TRACK STATEMENT

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- 1. Party:** Kirk Harrison
- 2. Attorney:** Robert L. Eisenberg, Lemons, Grundy & Eisenberg.
- 3. Lower court:** Eighth Judicial District Court
- 4. Judge:** Duckworth
- 5. Length of hearing:** Two days
- 6. Orders appealed:** Orders of March 15, 2017, January 18, 2017 and February 1, 2017 (filed July 24, 2017).
- 7. Notice of entry:** March 16, 2017 and July 25, 2017 (both via e-service).
- 8. Tolling motion:** None.
- 9. Notice of appeal:** April 14, 2017; Supplemental Notice filed August 24, 2017.
- 10. Law governing time limit:** NRAP 4(a).
- 11. Law granting jurisdiction:** NRAP 3A(b)(7)-(8).
- 12. Pending and prior proceedings in this court:** *Harrison vs. Harrison*, Numbers 66072, 66157 and 70727.
- 13. Proceedings raising same issues:** No. 66157.
- 14. Routing statement:** NRAP 17(a)(10) and (11); matter of first impression with statewide importance.
- 15. Procedural History:** Appellant (Kirk) and Respondent (Vivian) are the parents of Brooke (DOB 6/26/99) and Rylee (DOB 1/24/03). Kirk and Vivian agreed to a

50/50 joint physical custody arrangement, which the district court approved (Custody Order). 5A.App.938-939. The agreement included a teenage discretion provision, under which Vivian overly-empowered Brooke and incited Brooke to hate Kirk; and Brooke utilized the teenage discretion provision to live with Vivian full time, in violation of the shared Custody Order. 16A.App.3589-3590;8A.App.1631 - 1632;8A.App.1626.

Kirk moved for an order to show cause for Vivian's violation of the 50/50 joint physical custody agreement/order. 8A.App.1623-1673. Except for a momentary encounter at the orthodontist's office, Kirk did not see Brooke for **76 days**. 15A.App.3418-3419;16A.App.3471. Kirk's reply noted that "absent a strong deterrent from the court to Vivian, Rylee [the younger daughter] will be next." 8A.App.1710;1707-1715. At a hearing, the court essentially indicated that the court was not going to enforce the Custody Order. 13A.App.2757-2758;2793-2794;2800;2806;8A.App.1742;13A.App.2780;14A.App.3059-3060. The court denied Vivian's countermotion for primary custody and ordered the matter referred to an evaluator who "specializes in alienating behavior." 8A.App.1740-1742.

On October 6, 2015, the court entered an order finding: "[I]t is undisputed that [Kirk] has had little to no custodial time with Brooke for an extended period of time in violation of this Court's orders. Although it appears Brooke's relationship with

[Kirk] may have become strained over a period of time, the cessation of Brooke's custodial time with [Kirk] coincided with [Vivian's] direct involvement of Brooke in an insurance claim." 17A.App.3680. The court appointed Dr. John Paglini to evaluate the cause of Brooke's estrangement from Kirk, and to determine a course of action to repair the relationship. 17A.App.3680. Kirk objected to Dr. Paglini, based upon Vivian's counsel's prior ex parte communications with Dr. Paglini. 13A.App.2783-2784;10A.App.2209-2223;11A.App.2360-2363.

When Kirk continued to lose custody time with Brooke, Kirk filed a second motion to enforce the Custody Order. 8A.App.1744-1758. From mid-July 17 to mid-October, 2015, Kirk had spent less than 17 minutes with Brooke. 8A.App.1748-1749. Kirk stressed that Brooke should spend time with Kirk, or the relationship could be lost forever. 8A.App.1750-1752. Kirk filed another motion to enforce the Custody Order on December 16, 2015, because Vivian was involving Rylee in violating the Custody Order. 9A.App.1923-1942.

Dr. Paglini issued his report on January 25, 2016. 15A.App.3316-3375. The court ignored the fact that Kirk's loss of custody time with Brooke was caused by Vivian's wrongful over-empowerment of Brooke under the teenage discretion provision, seemingly to focus only on Dr. Paglini's erroneous conclusion there had been no parental alienation. 9A.App.1949. The court found that Kirk "has been

denied visitation time.” The court ordered the parties “follow a therapeutic reunification process with Dr. Ali within the parameters of Dr. Paglini’s report. Dr. Ali will determine the pace of therapy and what is appropriate for Brooke.” 9A.App.1949. Dr. Paglini recommended that “Kirk Harrison and his daughter be involved in intense frequent therapy to resolve their issues” and recommended “double sessions on a weekly basis.” 15A.App.3373-3374.

Dr. Ali agreed and attempted to schedule double sessions. Vivian and Brooke resisted, falsely claiming that Brooke’s school class and dance schedule did not allow time for such sessions. 10A.App.2127-2129. On May 25, 2016, the court entered its Findings and Orders Re: January 26, 2016 hearing, wherein the court acknowledged that Kirk had indicated his preference was to proceed with the reunification recommendation of Dr. Paglini of therapeutic counseling with Brooke, Kirk and Dr. Ali, and not proceed with the contempt proceedings at that time. The court denied Vivian’s countermotion to modify physical custody. 9A.App.1953-1954.

Between January 26, 2016 and the end of May of 2016, Brooke, Kirk and Dr. Ali should have had fifteen or sixteen weekly sessions, but there were only two. During the last session, Brooke made it clear to Dr. Ali and Kirk that she would not participate in any more sessions. 10A.App.2101;15A.App.3385-3387.

Dr. Paglini was appointed as an independent expert by the court. Therefore,

Kirk contacted him advising him of Brooke's unwillingness to participate in the court ordered sessions. 15A.App.3381. Dr. Paglini sent a letter to the court indicating that he was "dismayed that only two known sessions have occurred in family reunification therapy between Brooke and Mr. Harrison." 9A.App.1960.

On June 21, 2016, the court ordered Dr. Ali to provide the court with information about the history and status of reunification attempts, and in response, Dr. Ali provided a letter to the court, which was received by the court on July 5, 2016. 15A.App.3385-3387. Dr. Ali's letter was clear that Brooke resisted appointments from the beginning, claiming there was no time for the appointments because of her school and dance classes. Brooke rejected proposed appointments and cancelled scheduled appointments. As of the date of the letter, Brooke had only attended two sessions. The first session ended when Brooke departed after the first hour saying she would not participate in the remainder of the session. The second session also only lasted an hour, with Brooke stating, "she would no longer schedule or attend any sessions, in spite of and despite any consequences that the courts may place on her. Brooke stated that she felt the ordered reunification sessions were unjust and unfair, and that she had a right to live with her mother if she chose to." 15A.App.3386. Dr. Ali opined, "It is my opinion that Brooke has been overly empowered in this situation." 15A.App.3386.

On June 27, 2016, Vivian appealed the court's order denying her counter-motion to obtain primary custody of Brooke. 9A.App.1964-1975.

On July 28, 2016, this Court, in a 4-3 decision, ruled that the teenage discretion provision could only be utilized by a minor child to make minor adjustments to the weekly custody schedule, without deviating from the joint custody agreement. *Harrison v. Harrison*, 132 Nev. Adv. Op. 56, 376 P.3d 173 (2016). The Court ruled the agreement provides "only limited discretion to adjust weekly schedules without modifying the joint physical custody arrangement." *Id.* at 176. Importantly, the Court further noted: "Because the teenage discretion provision provides for flexibility **without deviating from the joint custody agreement, the best interests of the children remain intact** under it." *Id.* at 177 (emphasis added). "But that flexibility is necessarily limited." *Id.* at 176. "The limited discretion is the key factor for maintaining joint custody." *Id.* Parents retain power to allow enforcement of the provision only to the extent that they "do not interfere with the underlying joint physical custody arrangement." *Id.* at 177, fn. 5.

As a consequence of the total failure of the ordered joint reunification sessions and his continuing loss of custody time with Brooke, Kirk filed a Motion for Reunification Therapy for Minor Children and Father. 9A.App.1976-2076. As of July 21, 2016, Kirk had lost 152 custody days with Brooke. 9A.App.1985. In blatant

violation of the Custody Order, Vivian and her attorney had refused Kirk's and Kirk's attorney's requests for a copy of Brooke's class schedule at Nevada State High School for almost a year. 9A.App.1986-1987;14A.App.2940. The school refused to provide Brooke's class schedule to Kirk because he was not a parent, according to their records; Vivian had submitted a form representing to the school that Brooke does not have a father. 9A.App.1987-1988. When Kirk was finally able to obtain a copy of Brooke's class schedule, it confirmed that Vivian and Brooke's representations to Dr. Paglini and Dr. Ali's office regarding scheduling conflicts were false, and Brooke **did** have time for the sessions. 9A.App.1987-1990.

Kirk proposed a four day reunification program that had a 100% success rate, in which Kirk, both children and Vivian would participate; but the court found no jurisdiction to hear Kirk's motion for reunification therapy, because Vivian's appeal divested the court of jurisdiction. The court ordered that it deferred hearing the issues raised in Kirk's motion for reunification therapy until after disposition of Vivian's appeal. 9A.App.2078

Kirk continued to have almost no contact with Brooke. 15A.App.3417-3424. Therefore, he filed a motion to enforce the Custody Order, seeking the same relief sought in the motion for reunification, which had been deferred by the court. 10A.App.2096-2196. Kirk also filed a motion to nullify and void Dr. Paglini's expert

report. 10A.App.2207-2292. The court set two days for an evidentiary hearing, and ordered that Brooke could be called as a witness. The court noted: “Defendant [Vivian] has exercised *de facto* primary custody for more than a year.” 17A.App.3686.

In an effort to prevent Rylee from going down the same path as Brooke and to prevent Brooke from having to testify in court, Kirk filed a motion for a new expert recommendation in lieu of discovery and evidentiary hearing. 11A.App.2427-2440. The court entered an order on February 15, 2017, denying Kirk’s request to nullify the teenage discretion provision, noting: “This Court has noted at prior hearings that, absent an agreement, the Court *generally* will not entertain teenage discretion or the appointment of a parenting coordinator. However, this Court also *generally* defers to the stipulated decisions of two fit parents.” 12A.App.2612. The court wrote it was “not inclined to entertain a request to eliminate the teenage discretion provision when the parties are not abiding by the terms of the Order for Appointment of Parenting Coordinator.” 12A.App.2613. Kirk submitted a proposed order to the court on April 21, 2017, as the parties were unable to agree to a joint order from the evidentiary hearings. 16A.App.3652-3657. The proposed order included a finding that Kirk submitted substantial evidence of his lost custody time with Brooke during the hearing, that Vivian had been on notice for years that she was responsible for Kirk’s

lost custody time, and the court granted Kirk's motion for compensatory time for the 221 days of lost custody time with Brooke. 16A.App.3654-3655. The court accepted all of this language, as the only change requested by the court to the proposed order was on page 5 "regarding what does *not* constitute full compliance needs to be removed from the Order." 16A.App.3659. The proposed order was resubmitted with the court's requested change. 16A.App. 3649;3661-3666. Brooke's 18th birthday was not until June 26, 2017—almost two months away. However, the court did not file the order until July 24, 2017—almost one month after Brooke's birthday. The language concerning Kirk's lost custody time, Vivian's responsibility for that lost custody time, and an order granting Kirk's motion for compensatory time for the 221 lost days, which was acceptable to the court on May 2, 2017, was deleted. 16A.App.3642-3647.

16. Statement of Facts

In addition to the facts stated above, Kirk provides the following:

A. Vivian Overly Empowered Brooke Under the Teenage Discretion Provision, Brooke Utilized the Provision to Leave Kirk, and Vivian Obtained *de facto* Primary Custody.

Vivian's wrongful over-empowerment of Brooke under the teenage discretion provision has been well established. 16A.App.3589-3590. Brooke told Dr. Paglini she learned about teenage discretion from Vivian. 15A.App.3340. Kirk had never discussed the teenage discretion provision with Brooke. 5A.App.1063. Vivian

convinced Brooke that after her fourteenth birthday, she could utilize the teenage discretion provision to leave Rylee, her ten-year-old sister, for one-half the time and live full time with Vivian. 5A.App.1063-1064. However, the court made it clear to Vivian that “The exercise of ‘teenage discretion’ should not be used as a tool to remove blocks of time from either parent that would result in a modification of the underlying joint physical custody arrangement. The Court would be concerned if the exercise of ‘teenage discretion’ was regular and pervasive so as to cause a *de facto* modification of the underlying custody arrangement.” 7A.App.1606.

Undaunted by the court’s ruling, Vivian told Brooke, beginning when Brooke was still just 14 years old, that upon Brooke’s 16th birthday, Brooke was empowered under the teenage discretion provision to live with Vivian full time, as established by the following. The custody order requires the children to see a therapist. 5A.App.937-938. The court chose Dr. Jimil Ali, and at the first session, “Brooke talked about teenage discretion very early on in their first meeting.” 15A.App.3360; 11A.App.2448; 14A.App.3157. Brooke was only 14 years old at the time. 14A.App.3147. Brooke believed that when she was 16, she would be more empowered regarding where she would live. 15A.App.3361; 11A.App.2448-2449; 14A.App.3157-3158. During a later session, when she was 15, Brooke told Dr. Ali that when she is 16 years old, she would be able to choose to live with her mom

and only visit Kirk. 15A.App.3361-3362;11A.App.2449; 14A.App.3158.

It was not sufficient for Vivian to wrongly overly empower Brooke under the teenage discretion provision. Vivian also had to incite Brooke to exercise that wrongful over empowerment. Through no fault of Kirk whatsoever, a medical bill for Brooke incurred by Vivian was sent to collection. 8A.App.1625. There was an exchange of emails between Vivian and Kirk in late July of 2015, wherein it became very evident that Vivian was falsely telling Brooke that Kirk did not want to pay his own daughter's medical bills and that Kirk was unwilling to do anything to rectify the situation. 8A.App.1631-1632. Vivian convinced Brooke, who had just turned sixteen years old, that as a consequence of Kirk's supposed bad behavior and lack of action, Brooke had to telephone the insurance company and, with Vivian, speak to a supervisor and, as a result, **Brooke**, with Vivian, is now "**working directly with them for reimbursement.**" 8A.App.1625(emphasis in original).

In truth, Kirk pays for over 90% of Brooke's and Rylee's medical expenses, immediately contacted the insurance agent when apprised of the problem, and Kirk reimbursed Vivian for his share of this bill in compliance with Section 10.6 of the Custody Order. 8A.App.1625;1629. The insurance agent noted, "There is no reason for a child to have to call an insurance company about a claim. Ever." 8A.App.1625.

At one point both Brooke **and Rylee** stopped responding to Kirk's texts

altogether. 8A.App.1625. Within days thereafter, when Kirk was out of town, Brooke came to Kirk's home and removed all of her clothes. And Brooke sent a text to Kirk that she was not going to switch houses anymore. 8A.App.1626. Brooke made it clear that she does not want a relationship with Kirk and never wants to see him again. 16A.App.3524. Dr. Ali testified that Brooke was very upset over the medical billing issue and that it was a significant event for Brooke. 14A.App.3156-3157. Dr. Ali reported to Dr. Paglini that Brooke removed all of her clothes from Kirk's house after the medical reimbursement issue. 14A.App.3156-3157. Brooke did not want to see Kirk any longer after the medical billing issue. 16A.App.3522.

Before having the benefit of Dr. Paglini's report and Dr. Ali's testimony, it was obvious to the Court what happened. During the September 22, 2015 hearing, the Court noted: "Everything does line up and fall into shape, so I do – it does appear, when we look at the fact that Dad gets the email and essentially he's – **Brooke's written Dad off, and she comes in and cleans her closet out while Dad is gone**, all of this coincides with Brooke being on the phone [with the health insurance company]." 13A.App.2756(emphasis added).

Consistent with what Brooke had told Dr. Ali during their sessions, **Brooke** confirmed to Dr. Paglini that she **was utilizing the teenage discretion provision when she left her father and moved in with Vivian full time** in August of 2015.

15A.App.3340(emphasis added).

During the hearing on September 22, 2015, the Court was unequivocal in its position: “This is enforcement of a court’s order that provides the parties with joint physical custody, and **what has happened in the last two months is not joint physical custody**, period. And **Mom is ultimately responsible for that lack of time with Dad.**” 13A.App.2757(emphasis added). “So that’s the issue of contempt that I have before me that there’s been essentially a complete upheaval of the custody arrangement.” 13A.App.2758. And “... there’s no question that that time has been missed, and ultimately that’s on Mom’s shoulders.” 13A.App.2793. And “... it’s Mom’s responsibility to make sure that Brooke is with Dad.” 13A.App.2800. And later, “I do believe it’s in Brooke’s best interest to have a relationship with her father.” 13A.App.2806. In the Minute Order for the September 22, 2015 hearing, the Court ordered: “It is [Vivian’s] responsibility to facilitate the VISITATION.” 8A.App.1742(emphasis in original).

Although Kirk filed subsequent motions asking the district court to enforce the Custody Order, the district court continued to “run out the clock” by not enforcing the Custody Order. 14A.App.2938. As a foreseeable consequence, Kirk lost **221 days of custody time** with Brooke between August 12, 2015 and January 31, 2017. 15A.App.3216-3218;15A.App.3417-3426;16A.App.3473.

Despite the multiple rulings and orders by the district court that Vivian was responsible to insure that Kirk had his ordered custody time with Brooke, the court never enforced those rulings and orders, Kirk continued to lose the majority of his custody time with Brooke, and Kirk was never compensated with any days for the 221 days of lost time. This was despite the fact that Dr. Paglini testified that between the last day of the evidentiary hearing on March 1, 2017 and Brooke's 18th birthday on June 26, 2017, "[T]here should be a lot more time between Father and Brooke. There's no doubt about that." 16A.App.3579.

B. Kirk Did Nothing Wrong

Dr. Paglini testified that Kirk really did nothing wrong. 16A.App.3581-3587. He wrote in his report, "Brooke really does not offer evidence of her father's bad character." 15A.App.3367. Dr. Paglini testified, "I have a tremendous amount of respect for him." 15A.App.3261. Dr. Paglini testified: "I saw [Kirk] trying to genuinely trying to fix his relationship with his daughter." 16A.App.3602. Dr. Paglini testified that Kirk's efforts to heal the relationship with Brooke are sincere. 16A.App.3601-3602. Dr. Paglini noted that Kirk is doing everything he can to remain connected to both Brooke and Rylee; that Kirks loves his children; and that Kirk is concerned that Rylee being taken down the same path of rejecting him. 15A.App.3364-67; 16A.App.3573-3574.

C. Vivian and Brooke Violated the Court Order Requiring Weekly Two Hour Reunification Sessions with Dr. Ali, Brooke and Kirk.

Brooke told Dr. Ali that she was not coming back for anymore sessions. 14A.App.3143. Brooke's statement that she would not participate in any more sessions was clear and emphatic. 14A.App.3145. Brooke said she was not coming back for any more sessions because she disliked her dad and that was not going to change in therapy. 14A.App.3143-3144. In stark contrast to Brooke, Dr. Ali found consistent cooperation from Kirk in scheduling sessions and making himself available. 14A.App.3149.

D. The Evidentiary Hearing and Orders

The district court's stated reason for the evidentiary hearing was to determine why the ordered weekly two hour reunification sessions were not taking place, to determine whether to order the therapeutic program proposed by Kirk, and awarding make up time to Kirk for his lost custody days with Brooke. 14A.App.2932;2935-2936;3045;3047-3048;3060. The court also claimed the purpose of the hearing was to help the relationship between Kirk and Brooke; the court viewed that relationship as being broken and the court wanted to fix it. 14A.App.3060-3064. The court indicated it only wanted testimony from Brooke at the evidentiary hearing, except, "perhaps a bit from the parties." In response, Vivian's counsel requested Dr. Paglini

and Dr. Ali to testify at the evidentiary hearing.¹ 14A.App.2996. Vivian’s counsel also wanted 13 year old Rylee to testify at the evidentiary hearing. 14A.App.2996.

The district court acknowledged that ordering Brooke to testify “is the first time that – that I would have a child appear as a witness....” 16A.App.3434; 3050. The court was insistent Brooke testify, despite previously stating: “I don’t need a child interview, I - - the less I can embroil a child in this process, ultimately the better I feel a child is insulated from this process.” 12A.App.2681. Kirk pleaded with the judge not to call Brooke to testify, as the potential for harm to Brooke was significant. 14A.App.3053-3055. There is a tremendous risk in calling a minor child to testify when there is an issue of parental alienation. “Once a child forms a predominantly negative opinion of a parent, **and particularly once this opinion is expressed publicly**, it is liable to become deeply entrenched and highly resistant to modification even in the face of information that directly contradicts misconceptions.” Richard A. Warshak, *Payoffs and Pitfalls of Listening to Children*, (Family Relations 2003, Vol. 52, No. 4) at 375 (emphasis added)(citations omitted).

Unfortunately, the district court repeatedly refused to nullify the teenage

1

Despite Dr. Paglini appearing to testify as a result of Vivian’s counsel’ request, during the hearing counsel objected to Dr. Paglini testifying, stating, “I – I don’t understand why Dr. Paglini is in the courtroom today.” 15A.App.3204.

discretion provision, when it was clearly in the best interests of the children. The district court's stated reasons for not doing so are that the parents "agreed" to the provision, and so the judge was "not inclined to start meddling on my behalf judicially and interfering with what you agreed to." 14A.App.2932-2933. The court later stated that it signed off on the teenage discretion provision, but the provision "worries me." 14A.App.2997. However, the court rejected arguments that the teenage discretion should be nullified because it was not being obeyed, was being violated, was harming the children, and was worrying the court. 14A.App.2997.

E. Vivian will Likely Take Rylee Down the Same Path as Brooke Under the Teenage Discretion Provision

Dr. Paglini was appointed by the Court to make a recommendation for reunifying Brooke and Kirk. 9A.App.1953. Upon reading Dr. Paglini's report, the court accurately concluded:

But one thing that **alarmed me** was **the empowerment that Brooke was given through the teenage dis – [discretion]** and it – and – and the way I interpret Dr. Paglini's report is **the intent of that provision was eviscerated** with what happened in terms of empowering Brooke.

And I can't – I'm not here to change that.² **It concerns me in**

²

The court's statements that it cannot do anything with the teenage discretion provision, and that "I'm not here to change that," is very troubling. As Brooke, Rylee and Kirk continued to suffer, the court failed to address the problem by removing the source of the over empowerment—the teenage discretion provision. The "teenage

terms of if the same seeds have been planted with Rylee.

13A.App.2894 (emphasis added).

The court's concern that Vivian was planting the same seeds with Rylee as Brooke, and that Rylee would be taken down the same path, is consistent with Dr. Paglini's more recent concerns. Paglini testified that Brooke no longer talks to Kirk, and unless something changes, eventually Rylee will also no longer talk to Kirk. "Now are we going to end up having one daughter [Brooke] not talk to her father and eventually two daughters [Brooke and Rylee]...." 15A.App.3269. Dr. Paglini further testified that it is not in Brooke's and Rylee's best interest to continue to be empowered to determine what they will do and when they will do it. 16A.App.3484. Dr. Paglini testified that Brooke had been overly empowered under the provision. 16A.App.3487-3488. Although he has not recently interviewed Rylee, there is a concern that Rylee would model Brooke's overly empowered behavior. 16A.App.3488-3489. Dr. Paglini testified that he is familiar with what has happened

discretion" provision (Section 6 of the Stipulation/Order) includes the following: "Nothing in this section is intended to limit the discretion of the District Court in making child custody determinations." Under NRS 125.510(1)(b), the court may "modify or vacate" its order regarding custody. And generally under NRS 125.230(1), the court has the authority to enter such orders "as it may deem proper for the custody ... of any minor child or children of the parties." The Court's sole consideration in such a circumstance, "is the best interest of the child." NRS 125.480(1).

to Brooke, and he would hate to see something like that happen to Rylee. 16A.App.3492. Given the fact that Rylee has witnessed what has happened to Brooke, Dr. Paglini agreed a parent should be concerned about the impact upon Rylee. 16A.App.3493. Inexplicably, the district court declined to entertain any discussion about saving Rylee. 15A.App.3271-3273.

When the district court was pressed that something had to be done to protect the younger child, Rylee, the court noted that it understands no one wants to go through the next four years with Rylee what they have gone through during the last four years. However, the court stated that “it’s premature for me to rule on any of those issues.” 15A.App.3312. But when the court addressed it previously, he noted the whole thing about the teenage discretion provision and Rylee “worries me,” but stated he had signed off on the teenage discretion provision previously, implying the court was somehow estopped from nullifying the provision. 14A.App.2997. The court was urged again and again to take action to save Rylee. 16A.App.3437-3440. Rylee will turn 15 in January.

The evisceration of the teenage discretion provision severely adversely impacted not only Brooke, but Rylee and Kirk as well. Rylee lost her sister for one-half the time. Importantly, Rylee witnessed first hand Brooke’s wrongful utilization of the teenage discretion provision and the power Brooke wielded in the family.

On December 29, 2016, Kirk filed, “Plaintiff’s Motion for New Expert Recommendation in Lieu of Discovery and Evidentiary Hearing.” 11A.App.2427-2440. At the hearing, it was noted that Kirk had lost meaningful contact with Brooke and this was starting to happen with Rylee. “And we are either going down the same road with Rylee or we are going to do something to change it.” 16A.App.3433. It was also confirmed that the focus of this motion was to save Rylee. 16A.App.3433-3434. Section B of that motion is entitled: “The Court is urged to enter orders to ensure that Rylee does not go down the same path.” 11A.App.2434. The district court was urged to take action in Rylee’s best interest:

We respectfully request the Court to order Dr. Paglini to make recommendations to the Court regarding what should be done to prevent the wrongful empowerment of Rylee in the parent/child relationship and to also prevent the alienation of either parent from Rylee in the future.

We respectfully suggest that Dr. Paglini, in consultation with Dr. Ali, should consider whether it is in the best interest of Rylee for the Court to nullify the teenage discretion provision to prevent the wrongful empowerment of Rylee in the parent/child relationship. We further respectfully suggest that Dr. Paglini, in consultation with Dr. Ali, also make such further proactive recommendations he believes are necessary to prevent the wrongful empowerment of Rylee in the parent/child relationship and to prevent the alienation of either parent from Rylee.

In light of what has happened to Brooke, it would clearly not be in the best interest of Rylee to fail to take reasonable and common sense proactive measures now to protect Rylee and to prevent Rylee from going

down the same path.

11A.App.2435.

Kirk continued to urge the court to protect Rylee and enter orders in Rylee's best interest. Section 2 of the motion argued:

2. Unless Something Is Done, Vivian Will Take Rylee
Down the Same Path She Took Brooke

Vivian has, indisputably, eviscerated the "teenage discretion" provision and will continue to do so irrespective of the rulings and orders of this Court and the affirmance of those rulings and orders by the Nevada Supreme Court. Vivian simply has no respect for the rulings and orders of this Court or for the affirmance of those rulings and orders by the Nevada Supreme Court. What Vivian is doing is in knowing violation of the joint physical custody provision, the "teenage discretion" provision, the rulings and orders of this Court, and the opinion of the Nevada Supreme Court.

The continued existence of the "teenage discretion" provision, continues to provide the justification to Vivian to continue to callously manipulate Brooke and Rylee, to continue to wrongfully empower Brooke and Rylee in their relationship with their father, and to continue to provide motivation to Vivian to alienate Kirk from Brooke and Rylee. The "teenage discretion" provision is being used by Vivian to emotionally manipulate and harm Brooke and Rylee. The unwillingness of Vivian to abide by the terms, and the inability to enforce material terms, encourages the abuse. It is clearly in the best interest of Rylee for the Court to nullify and void this provision to stop Vivian's emotional damage of these children. This perceived incentive must be nullified. The "teenage discretion" provision and the protections contained in that provision have been so violated and disregarded that the provision has been eviscerated. We ought to care enough about Rylee to avoid a scenario in two years where Rylee has been wrongfully empowered to willfully violate this Court's orders.

It is not in Rylee's best interest to spend the next four years being callously manipulated by Vivian by being wrongfully and unlawfully empowered in her relationship with her father, by Vivian severely alienating Kirk from Rylee based upon such fictitious issues as falsely asserting that Kirk does not care enough about his own children to pay their medical bills, and by Vivian convincing Rylee that if she does anything with Kirk she is somehow betraying Vivian or somehow choosing Kirk over Vivian.

Just like other children, Rylee needs a stable, consistent, certain, loving, caring, and nurturing environment. Rylee will never have that environment so long as Vivian is motivated by the continued existence of the "teenage discretion" provision, which has been eviscerated by Vivian's contemptuous actions.

11A.App.2437-2438.

Vivian caused Brooke to shed too many tears and experience too much emotional pain. 11A.App.2492;9A.App.1857-1875. Vivian's actions effectively empowered Brooke to use the teenage discretion provision to modify the custody agreement. There is no question the seeds of wrongful over-empowerment under the teenage discretion provision have been planted with Rylee. 11A.App.2493-2506.

The relationship between Kirk and Brooke did not have to be destroyed. Kirk cannot now be expected to allow his relationship with Rylee to be destroyed in the same manner, as the district court will undoubtedly continue to fail to enforce the Custody Order, the teenage discretion provision, the district court's own rulings and orders, and this Court's decision in *Harrison*. Unless this Court acts, Kirk will lose

the agreed to and court ordered 50/50 joint physical custody of Rylee, Rylee will suffer, and his relationship with Rylee will be destroyed. Under any “best interests of the children” analysis, it is in Rylee’s best interest to have the teenage discretion provision nullified.

17. Issues on Appeal

1. Whether the court erred by failing to enforce the 50/50 joint custody agreement, the teenage discretion provision, the rulings and orders of the court, and the *Harrison* decision, all of which resulted in destroying Kirk’s relationship with his daughter Brooke, when there was overwhelming evidence that Vivian overly empowered Brooke under the teenage discretion provision, Brooke utilized the teenage discretion provision to sever her relationship with Kirk, and Vivian thereby obtained *de facto* primary custody.
2. Whether the court’s error in not enforcing *Harrison*—i.e., by allowing the teenage discretion provision to effectively destroy the relationship between Brooke and Kirk, resulting in a *de facto* change in the agreed custody arrangement—will result in the same thing happening to Rylee.
3. Whether, after it became apparent that *Harrison* was not being obeyed and was not working in this case, the court erred by not nullifying the teenage discretion provision for Rylee.
4. Whether the court erred by not using a best interests of the children standard to determine if the teenage discretion provision should be nullified and, instead, deferring to the “agreement” between the parties.
5. Whether this Court should revisit *Harrison*’s holding that teenage discretion provisions are allowable in Nevada.
6. Whether the court erred in refusing to nullify the teenage discretion provision on the basis the parties had not utilized a parenting coordinator, when there was no reason to believe Vivian would not have violated any “recommendation” of

a parenting coordinator.

7. Whether a Machiavellian scheme of combining a teenage discretion provision, a parenting coordinator provision, and a mandatory child therapy provision (which prohibits the parents from talking to the therapist) is contrary to the best interests of children and against public policy.

18. Argument

A. Introduction

Kirk has consistently been an attentive, loving, and caring father to Brooke and Rylee. 9A.App.1854. However, Vivian wrongfully empowered Brooke under the teenage discretion provision, inciting Brooke to utilize that over empowerment to deprive Kirk of 50/50 joint physical custody, and to allow Vivian to obtain *de facto* primary custody. Despite these facts, the district court refused to enforce the Custody Order, refused to enforce its own rulings and written orders, refused to apply the standards mandated by *Harrison*, and refused to grant relief to Kirk. Foreseeably, Kirk's relationship with Brooke has been destroyed. The district court has provided no deterrent to prevent Vivian from doing the same thing to Rylee, which has already started.

B. It is not in the Best Interests of a Child to be Empowered in Her Relationship with Her Parent

A child should not be empowered in her relationship with her parents. There is a tension between empowering children and placing them in the middle of their

parents' disputes. Richard A. Warshak, *Payoffs and Pitfalls of Listening to Children* (Family Relations, Vol. 52, No. 4, 373-75 (October 2003)). The more weight accorded children's stated preferences, the greater the risk of children being manipulated or pressured by parents. *Id.* Through a variety of tactics, a parent can corrupt a child's view of the other parent. *Id.* Once the child forms a predominantly negative opinion of a parent, and particularly once this opinion is expressed publicly, it is liable to become deeply entrenched. *Id.*

The continued existence of the teenage discretion provision deprives Kirk of almost all parental authority. For example, Kirk may tell Rylee she needs to clean her room. Under Vivian's (and the district court's) view of the teenage discretion provision, Rylee can simply avoid the task by responding with a command for Kirk to take her to Vivian's house. Dr. Warshak's article observes that children do best in authoritative structures; and giving them too much authority can cause anxiety, narcissism and impaired relationships with adults, along with impulsive, aggressive and irresponsible behavior. *Id.* at 376. Children under 18 are "highly vulnerable to outside influences," and this can result in "a pathological alliance with one parent against the other." *Id.* at 377 (citations omitted)(emphasis added).

It is not in a child's best interest to be empowered to decide what is in her best interests. The treatise "A Judge's Guide—Making Child-Centered Decisions in

Custody Cases,” 2nd Ed., (ABA 2008) addresses this issue:

The Adolescent or High School-Aged Child (14 to 18 Years)

- Strike a balance. An adolescent should express his or her views via testimony, a court-appointed attorney, or an in camera interview. At the same time, however, you should make clear that ***it is not their responsibility to make a decision about what is in their best interests.*** Respect the adolescent’s cognitive ability and independence, yet understand that ***it is a vulnerable time and the adolescent still needs significant protection.***

Id. at 75 (emphasis added).

Brooke decided to live full time with Vivian, after being wrongfully empowered by Vivian under the teenage discretion provision. Unfortunately, it is now too late for Brooke. However, it is a vulnerable time for Rylee, and she needs protection. The Court should insure that protection by nullifying the teenage discretion provision, so Rylee gets a clear message that it is not her responsibility to make such a decision and she is not empowered in her relationship with her father.

The empowerment of children in the relationship with their parents is not in the best interests of the children. Empowering minors to determine modifications to their custody is a very bad idea, because it improperly places on the child the responsibility of determining, from time to time, which parent will have custody. See *Parker v. Parker*, 112 So. 2d 467, 471 (Ala. 1959). Responsibility for cultivation of the parent-child relationship is the responsibility of the parents, not the child; to place it with the

child can destroy it, not protect it. *Moore v. Moore*, 331 So. 2d. 742, 744 (Ala. App. 1976).

Dr. Norton Roitman also opined that empowering children in the relationship with their parents is not in the best interests of the children. 7A.App.1390-1402.

It is not in the best interests of teenagers to be given the authority to decide when and where to spend time with their parents, especially when they are undergoing such tremendous changes themselves.... There is no scenario I can imagine in which giving children the right to direct their parents over matters as important as custody and visits not only because it allows for escape from being parented, but because of the wide implications of the dissolution of parental authority and the adjustments the entire family undergoes as a result.

7A.App.1401.

As evidenced by what happened in this case, it is irrational to assume that once a child is empowered over a parent, the child will be cognizant of and abide by the legal boundaries set forth in the *Harrison* decision. We are then confronted with a situation where the district court does not know what to do, or is simply unwilling to address the clear violations; and the parent-child relationship can be forever lost.

Through Vivian's knowing wrongful empowerment of Brooke under the teenage discretion provision, she obtained *de facto* primary custody of Brooke. This was never contemplated by *Harrison*. Unless the teenage discretion provision is nullified, Vivian will do the same thing with Rylee. It is in Rylee's best interest to

nullify the teenage discretion provision as soon as possible.

C. Dr. Paglini Based his Conclusions Upon Material Misrepresentations by Vivian and Brooke

Brooke had told Dr. Ali on several occasions that she hates Kirk and does not want a relationship with him. 11A.App.2443. Brooke told Kirk the same thing. 9A.App.1865-1866;9A.App.1983. It is now clear that Vivian's agenda was to convince Dr. Paglini that she had not alienated Kirk from Brooke. Brooke is so enmeshed in Vivian's agenda that Brooke lied to Dr. Paglini and told him she does not hate Kirk, she loves Kirk, and she wants a relationship with him. 11A.App.2364-2365. Vivian was aware this was contrary to what Brooke had been telling Dr. Ali, as Vivian debriefed Brooke after each sessions with Dr. Ali. 13A.App.2774;11A.App.2443. Vivian was also fully aware this was contrary to what Brooke had told Kirk on numerous occasions, as Brooke often said this to Kirk right after a telephone call with Vivian. 9A.App.1865-1866.

Vivian told Dr. Paglini that Brooke loves her father, but it was just too stressful for Brooke to go back and forth from home to home. 15A.App.3323-3324. Based upon repeated statements by Vivian and Brooke that Brooke does not hate Kirk, and she wants a relationship with him, Dr. Paglini concluded that Brooke had not pathologically rejected Kirk. 15A.App.3375. On the other hand, Dr. Paglini observed

that “Brooke has decided that she is not going to be involved in joint physical custody with her father,” and that she “unilaterally decided to reduce her visitation hours with her father.” 15A.App.3362.

Brooke’s statements to Dr. Ali, Kirk, and then Dr. Ali and Kirk, are clear evidence that Vivian has successfully alienated Kirk from Brooke. 9A.App.1983;10A.App.2101;15A.App.3385-3387. The alienation of Kirk from Brooke, including the extremeness of Brooke’s behavior and attitude towards Kirk, should be alarming. 15A.App.3333,3335,3362,3366,3368. To prevent alienation and its resulting injuries from becoming permanent, **“swift decisive action by the courts is necessary.”** Chaim Steinberger, *Father? What Father? Parental Alienation and Its Effect on Children – Part Two*, (NYSBA Family Law Review 2006) at 11 (emphasis added). If the alienation continues, the “destructive dynamic” becomes “entrench[ed]” and the children’s positions solidify. *Id.* Alienation can be “subtle and insidious and its devastating effects potentially permanent and irreversible.” *Id.*

Vivian’s manipulation of Brooke was a form of abuse and the court’s first priority must be to protect Rylee from harm. “Experts regard the attempt to poison a child’s relationship with a loved one as a form of emotional abuse.” Richard A. Warshak, *Divorce Poison*, 2nd Ed., (Regan Books 2010), p. 8; see also Steinberger, *supra*, at 10 (parental alienation is a form of child cruelty and abuse); Demosthenes

Lorandos et al, *Parental Alienation—the Handbook for Mental Health and Legal Professionals* (Charles C. Thomas 2013) at 19 (parental alienation can lead to low self-esteem and recurrent depression).

Overwhelming evidence shows Vivian has been denigrating Kirk to the girls for more than six years. 9A.App.1857-1875. For example, when Rylee was only eight years old, Vivian called Kirk “Satan” in Rylee’s presence. 6A.App.1214. When Rylee was nine, Kirk asked Rylee to sit next to him to watch television and snuggle. Rylee responded: “I’m not supposed to snuggle you anymore dad.” 6A.App.1215;9A.App.1859. Unable to see the harm she has done to Brooke, Vivian has started to take Rylee down the same path, and Rylee will be harmed in the same manner, unless the teenage discretion provision is nullified and the court begins to enforce its own orders.

D. Vivian Violated the Custody Order, the Teenage Discretion Provision Safeguards, the Court’s Rulings and Orders, and this Court’s Decision; She Would Also Have Likely Violated Any “Recommendation” of a Parenting Coordinator

The district court believed it was without the authority to invalidate the teenage discretion provision. 13A.App.2894. It also indicated it would not “meddle” with a provision to which the parties agreed. 14A.App.2932-2933. However, in its final order on the subject, the court wrote it was “not inclined to entertain a request to

eliminate the teenage discretion provision when the parties are not abiding by the terms of the Order for Appointment of Parenting Coordinator.” 12A.App.2613. The Court’s intimation that all would be well if the parties would have simply utilized a parenting coordinator is sheer folly. Vivian knowingly violated the Custody Order, the teenage discretion provision, the rulings and orders of the court, and this Court’s *Harrison* decision, by empowering Brooke to modify the custody arrangement. There is no reason to believe Vivian would have followed “recommendations” of a parenting coordinator.

Moreover, a parenting coordinator was never utilized because of the court’s ruling that a parenting coordinator could not interview the children, as Vivian requested. 7A.App.1596. Vivian lost interest in utilizing a parenting coordinator after that ruling. Kirk was unequivocal that he would execute a parenting coordinator agreement consistent with the court’s orders and rulings, which did not include a provision in the agreement authorizing the parenting coordinator to interview the children. 8A.App.1695-1697.

E. Unsuspecting Parents, Who Must Avail Themselves of Family Court, and Their Innocent Children, Desperately Need This Court’s Protection and Guidance.

Despite the majority opinion’s best intentions in *Harrison*, events that happened in this case in the time since *Harrison* was issued show that teenage discretion and

parenting coordinator provision just do not work. And they are contrary to the best interests of children. This court should therefore revisit *Harrison*.

Most parents, who must avail themselves of Family Court, presumably, just like Kirk, have never heard the terms “teenage discretion” and “parenting coordinator.” Similarly, they presumably do not know if its normal to require their children to have mandatory counseling with a therapist; and they certainly do not know if it is normal to prohibit the parents from talking to the children’s therapist. Of necessity, they must trust their divorce lawyers to properly advise them.

Common sense dictates that parents would not knowingly create a provision that empowers a child to issue orders to the parents, which the parents must obey. Similarly, parents did not create quasi-judicial parenting coordinators, who have financial incentives to become involved with and control almost every aspect of the relationship between parent and child. Parents did not create mandatory therapy provisions for minor children, which prohibit the therapist from communicating to the parents.

This court should not proceed under the fiction that both parents *knowingly* agreed to this callous Machiavellian scheme, which is clearly contrary to the best interests of children, and which ensures post-divorce conflict and the generation of attorney’s fees. Children are not mere pawns in a chess game where they are

sacrificed, won or lost. Teenage discretion provisions create too much unnecessary suffering for children and are separating good parents, who have done nothing wrong, from their children. A parenting coordinator encourages conflict and the continuation of conflict. Mandatory child therapy, where the parents cannot communicate with the therapists, creates a mechanism where false beliefs of children are reinforced and are not in the best interests of children.

The appointment of a parenting coordinator creates a readily convenient forum for a manipulative parent who wants to continue the battle after the divorce is over. The draconian one-two punch of a teenage discretion provision and the involvement of a parenting coordinator, both of which create and encourage conflict in which the minor children are embroiled after the divorce is over, is more than most families with minor children can emotionally and financially withstand.

1. Teenage Discretion Provisions

It has been established in this case that most teenage discretion provisions are typically just one line, which only provides that the parties agree “the child will have teenage discretion to exercise visitation with the other parent.” 12A.App.2699-2701. This language is ambiguous. 12A.App.2701. No responsible parent would knowingly agree to a provision that would be applied in a manner that empowers the parent’s 14-year-old child to give the parent orders and commands, which the parent must obey.

Every parent would know that such a provision would not be in the best interest of that child or that child's younger siblings. Every parent would know that such a provision would severely undermine parental authority. The reasonable expectation or paradigm of parents unfamiliar with family court is that courts, judges, and lawyers do not have provisions which empower a child in her relationship with her parents so the child can give a parent an order, which the parent must obey without question or discussion. No one but some divorce lawyers and some family court judges might imagine that provisions which empower children to order their parents, and the parents must obey, are in anyway acceptable. Unsuspecting parents are being ambushed by these ambiguous provisions.

Similarly, the teenage discretion provision in this case is also highly ambiguous. There is no expressed agreement where the parties agree: "I agree that my child is hereby empowered to command me to take her to my former spouse's house, at any time and without any reason, and I must obey that command without question." On the contrary, there is only an expression of an *intention* "to allow the children to feel comfortable"—not an absolute agreement! The operative language in this case provides:

The parties do not intend by this section to give the children the absolute ability to determine their custodial schedule with the other parent. Rather, the parties **intend to allow the children to feel comfortable in**

requesting and/or making adjustments to their weekly schedule, from time to time, to spend additional time with either parent or at either parent's home.

5A.App.939(emphasis added).

This court should have serious concerns as to why teenage discretion provisions do not expressly provide what they are interpreted to mean, namely, that a child is empowered to command her parent at any time to take her to the other parent's house. The only limitation being that this cannot occur with such frequency and duration to undermine the joint physical custody agreement of the parties. The justices in the majority opinion implied they would not agree to such a provision ("Even if we disagree with the Harrisons' decision to grant their teenage children discretion to initiate weekly schedule changes...."). Respectfully, no parent would knowingly, if properly advised, ever agree to such a provision. Parents presumably know it is not in their child's best interest to empower the child in her relationship with her parent. Kirk had no experience in family court and had never seen a teenage discretion provision before. Kirk was assured by his lawyers the provision did not provide anything differently than the law otherwise provides. Attorney Standish swore:

8. Kirk had never seen a teenage discretion provision before and did not know what it was. When he read it he expressed concern. I assured him with the changes I ultimately had made, it did not provide anything differently than the law otherwise provides. Kirk questioned if that was the case, then why was the provision necessary. I told him it

was because Vivian was aware of teenage discretion and Mr. Smith said he had to have it in the agreement to satisfy his client.

6A.App.1387.

Kirk was also assured by his lawyers that under the provision a child could only make a request, which is consistent with the advice the provision does not provide anything differently than the law otherwise provides. Standish swore to his understanding that the teenage discretion provision provided that the child could only make a request:

As written, it was my interpretation of the provision that after the age of 14 years, the child could make a request. It was never my understanding under this provision that a child could order a parent to make a change to the weekly schedule and the parent had to obey . . .

6A.App.1388.

Similarly, attorney Kainen swore his interpretation of the teenage discretion provision was:

The parties' parenting agreement gives the children the ability to *request* changes to the custodial schedule. It *does not* give the children carte blanche to make changes to the custodial schedule whenever they see fit.

6A.App.1303;1383-1384(emphasis in original).

Kirk's attorneys interpreted the provision as formalizing the right of the child to make a request. The formalization of this right, arguably, created a standard of

reasonableness on the parent granting or denying each such request, which would not exist absent the provision.

In stark contrast to what Kirk was advised, Vivian's lawyer would later opine that "Mr. Harrison must know that the 'teen' exception in the custody agreement will be exploited by the girls and it is Vivian who will have *de facto* primary custody." 11 A.App.2449. A third different interpretation was made by the majority in *Harrison*, who interpreted the provision as empowering the children to order a parent to take them to the other parent's house at any time and the parent must obey, but not to such an extent that one parent will obtain *de facto* primary custody. Respectfully, with three very different and inconsistent interpretations, it is legally impossible for there to have been a sufficient meeting of the minds to have an enforceable provision.

2. Parenting Coordinator Provisions

The entire parenting coordinator provision in this case provides:

4. *Parenting Coordinator:* The parties shall hire a Parenting Coordinator **to resolve disputes** between the parties regarding the minor children. The Parenting Coordinator shall be chosen jointly by the parties. The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon by the parties. If the parties are unable to agree upon a Parenting Coordinator, or the terms of an Order appointing the Parenting Coordinator, within thirty (30) days of the date of the filing of this Stipulation and Order, then the Court shall appoint that individual and resolve any disputes regarding the terms of the appointment.

5A.App.938(emphasis added).

Kirk had been retained hundreds of times as a mediator **to resolve disputes**. 6A.App.1372;1381. However, he had never heard the term “parenting coordinator,” and when he read the parenting coordinator provision, he questioned what a parenting coordinator did; he was told that a parenting coordinator functioned as a mediator. 6A.App.1372;1381;7A.App.1462. He assumed the term “parenting coordinator” was used to describe a mediator who specialized in custody issues for family court cases. 6A.App.1372,1381;7A.App.1462. A parenting coordinator is a mediator in child custody matters in Utah. *See* Utah Code Jud. Admin. Rule 4-509.

Parents have a fundamental right in the care and custody of their children. *Troxell v. Granville*, 530 U.S. 57, 65-66 (2000). Therefore, the highest level of scrutiny should be given to any contractual provision whereby it is alleged the parents assigned any part of those fundamental rights to a third party.

The provision provides: “The Parenting Coordinator shall serve pursuant to the terms of an order mutually agreed upon by the parties.” Provisions such as this are unenforceable. A provision “which leaves an essential term to future agreement is not enforceable.” *City of Reno v. Silver State Flying Service*, 84 Nev. 170, 175, 438 P.2d 257, 262 (1968). Here, **all** essential terms are left to future agreement. Parties must know to what they are agreeing with specificity at the time they make the agreement,

otherwise the agreement is unenforceable. See *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005) (“a court cannot compel compliance when material terms remain uncertain”).

This court should give close scrutiny to situations in which unsuspecting parents, such as Kirk, are provided a short paragraph providing a person will be utilized “to resolve disputes” with all terms to be negotiated later, rather than a proposed Parenting Coordinator agreement.

3. Mandatory Child Therapy Provisions, which Prohibit any Communication between the Therapist and the Parents, are Contrary to the Best Interests of Children

The Custody Order mandates the children see a therapist and prohibits the parents from directly contacting the therapist, “in the absence of a written agreement to that effect.” 5A.App.937-938.

Teenage discretion provisions can be utilized to motivate a manipulative parent to alienate the other parent from a child. Divorce attorneys are well aware of this fact. This is why Vivian’s attorney opined that Vivian would obtain *de facto* primary custody. 11A.App.2449. It is clearly not in the best interests of a child to be so manipulated.

A mandatory child therapy provision, which prohibits any parental contact with the therapist, can be used in conjunction with teenage discretion provisions to

reinforce the alienation of the target parent from the child. Perhaps this is also why: “[T]ypical or conventional office therapy is virtually never successful in severe cases [of parental alienation], and **often makes things catastrophically worse.**” Kathleen Reay, *Family Reflections: A Promising Therapeutic Program Designed to Treat Severely Alienated Children and Their Family System* (The American Journal of Family Therapy 2015), p. 4 (emphasis added). Such therapy makes things catastrophically worse because the therapist, unwittingly, amplifies and exacerbates the child’s false belief:

Alienated children suffer from distorted perceptions and images of their targeted parent. These distortions cause them to feel hatred and animosity towards the target. Their hatred and animosity, though unfounded, are genuinely held. As a result, **exploring their feelings will likely not dissipate the hatred and animosity and, more likely, will only amplify and exacerbate them.** It is only by identifying, unraveling and then finally challenging the distortions and beliefs that underlie their feelings, that the children can begin to open their hearts and minds to the possibility of a relationship with the target. Requiring them to spend large quantities of time with the parent then enables them to see him as the caring, loving parent he often is.

Steinberger, *supra*, at 10 (emphasis added).

F. Relief requested

This court is respectfully requested to immediately remand with instructions to nullify the teenage discretion provision in this case, and for the district court to enforce the Custody Order and its prior rulings and orders regarding Vivian’s

affirmative responsibility to insure Kirk has the joint physical custody regarding Rylee, to which Vivian agreed and the court ordered.

The law of the case under *Harrison* is the teenage discretion provision cannot be utilized to deviate from the joint custody agreement, which is, however, what Vivian did with Brooke. The provision must now be nullified to protect Rylee from the same fate suffered by Brooke. The emotional toll upon Rylee, Brooke, and Kirk has been substantial. They have all suffered enough. The district court denied relief, apparently, based upon a factual determination that Rylee has not yet been overly empowered enough under the eviscerated teenage discretion provision, that Rylee has not yet suffered enough under the eviscerated teenage discretion provision, and is willing to gamble with Rylee's long term emotional well being. As Rylee's father, Kirk believes Rylee has suffered enough. Just like other children, Rylee needs a stable, consistent, certain, loving, caring, and nurturing environment—including a father. Rylee will never have that environment so long as Vivian is motivated by the continued existence of the “teenage discretion” provision, which has been eviscerated by Vivian's actions.

The circumstances here have also established that the court should revisit *Harrison* and order that teenage discretion provisions are against public policy, because such provisions: (1) wrongfully empower children in their relationship with

their parents; (2) foreseeably motivate a manipulative parent to alienate the other parent from the children; (3) are clearly not in the best interests of the children, and; (4) by using ambiguous language, are being foisted upon unsuspecting parents, who do not know what the term “teenage discretion” means and do not know the import of such provisions.

The court should also order that the parenting coordinator provision in this case is unenforceable because it is too indefinite in its terms and material terms remain uncertain. The court should also order that any parenting coordinator provision which does not contain sufficient specificity to reasonably inform an unsuspecting parent as to what they are “agreeing” to is against public policy and void as a matter of law.

The court should also order that a child therapy provision, which prohibits communication between the therapist and the child’s parents, is contrary to the best interests of the child and is void as against public policy.

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Finally, the court should reverse the district court's order, entered on February 15, 2017, awarding Vivian attorney's fees for Kirk filing too many motions to nullify the teenage discretion provision. 12A.App.2613.

DATED this 24 day of October, 2017.

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Finally, the court should reverse the district court's order, entered on February 15, 2017, awarding Vivian attorney's fees for Kirk filing too many motions to nullify the teenage discretion provision. 12A.App.2613.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this fast track statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this fast track statement has been prepared in a proportionally spaced typeface using WordPerfect version X7 in 14 point Times New Roman type style.

2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it is proportionately spaced, has a typeface of 14 points or more, and contains 9,997 words (per pending motion).

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track statement and the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track statement, or failing to raise material issues or arguments in the fast track statement. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information, and belief.

DATED: Oct. 24, 2017


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CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date appellant's Child Custody Fast Track Statement and his appendix were filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Radford J. Smith	(rsmith@radfordsmith.com)
Gary R. Silverman	(silverman@silverman-decaria.com)
Kirk Harrison	(kharrison@harrisonresolution.com)

DATED: October 24, 2017.



Susan G. Davis, Assistant to
ROBERT L. EISENBERG