IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRK ROSS HARRISON, Appellant, vs. VIVIAN MARIE LEE HARRISON Respondent.	)	No. 72880

MOTION FOR CONFESSION OF ERROR AND FOR ORAL ARGUMENT

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Appellant hereby moves for a confession of error regarding all non-precedential requested relief and for oral argument on other requested relief.

A. Respondent's Failure To File a Fast Track Response Constitutes a Confession of Error

This is a fast track child custody appeal. The timeliness of a fast track response is important, because the court must dispose of the appeal within 90 days of the fast track response. NRAP 3E(g)(4).

Respondent's fast track response was due on November 22, 2017. On November 21, 2017, Respondent filed a motion requesting an extension until December 6, 2017. Respondent requested a second extension until December 13, 2017, representing that the response was delayed because of "significant computer problems." The court granted an extension until December 15, 2017. By January 18, 2018, Respondent had failed to file the response and failed to communicate with the court, and the court, *sua sponte*, granted an extension until January 29, 2018. The court warned: "Failure to comply with this order or any other filing deadlines will result in this appeal being decided without a fast track response from respondent." Respondent has still failed to file a fast track response.

Under these circumstances, a confession of error is clearly warranted. NRAP 31(d)(2) provides that if a respondent fails to file an answering brief, the respondent will not be heard at oral argument except by permission of the court, and such failure

may be treated as a confession of error. See *State of R. I. v. Prins,* 96 Nev. 565, 613 P.2d 408 (1980) (appellant appealed order providing for no child support; respondent's answering brief was more than two months overdue; Supreme Court found confession of error and reversed with instructions for district court to determine reasonable support). Numerous decisions are in accord with *Prins*. See e.g., *Toiyabe Supply Co. v. Arcade Dress Shops, Inc.,* 74 Nev. 314, 330 P.2d 121 (1958) (failure to file answering brief treated as confession of error); *Knapp v. Lemieux,* 97 Nev. 450, 634 P.2d 454 (1981) (same); *Kitchen Factors, Inc. v. Brown,* 91 Nev. 308, 535 P.2d 677 (1975) (same); *Hansen Plumbing and Heating of Nevada, Inc. v. Gilbert Development Corp.,* 97 Nev. 642, 638 P.2d 76 (1981) (same).

Respondent's failure to file a fast track response constitutes a confession of error. The appropriate remedy is the granting of all relief sought by Appellant, which is not precedential and is set forth on pages 41 through 43 of the Fast Track Statement. Specifically, the court should reverse and remand with instructions to: (1) nullify the teenage discretion provision; (2) nullify the parenting coordinator provision; (3) nullify the mandatory child therapy provision, which prevents the parents from communicating with the therapist; (4) instruct the trial court to enforce the Custody Order and its prior rulings and orders regarding Vivian's affirmative responsibility to insure Kirk has the agreed to and ordered 50/50 joint physical

custody of Rylee, and; (5) 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.

B. Oral Argument Should be Set As to the Requested Relief Which Presents Public Policy Precedential Issues of Statewide Importance

Part of the relief requested by Appellant presents public policy precedential issues of statewide importance, which critically impact thousands of innocent children in this State. This requested relief should be granted, but after oral argument and a consideration of the merits. Appellant has requested: (1) the court to revisit *Harrison v. Harrison*, 132 Nev. Adv. Op. 56, 376 P.3d 173 (2016) and order that teenage discretion provisions are against public policy, because such provisions are clearly not in the best interests of children and are very harmful to children; (2) any parenting coordinator provision which does not contain sufficient specificity to reasonably inform unsuspecting parents as to what they are "agreeing" is against public policy and void as a matter of law, and (3) a mandatory child therapy provision, which prohibits communication between the therapist and the children's parents, is contrary to the best interests of children and is void as against public policy.[1] Statement, p. 42-43.

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[1]Unsuspecting parents, who must avail themselves of family court, and their innocent children, desperately need this court's protection.

A teenage discretion provision is **not** in the best interest of minor children as it overly empowers children to issue orders to their parent, which parents must obey. The only expert opinion in this case regarding teenage discretion was by Dr. Norton Roitman.[2] 7A.App.1390-1402. Dr. Roitman's conclusion was that teenage discretion provisions are ill-advised and can be deeply damaging, and further opining, "I can't envision any scenario where it would be in the best interest of a teenager to be able to order their parent to modify their custody schedule." 7A.App.1401.

Dr. Roitman's opinion is unopposed, correct, and consistent with all other expert authority and common sense. "[G]iving children too much authority can create excessive anxiety, a narcissistic sense of entitlement, and impaired relations with adults" and cause the children "more likely to be impulsive, aggressive, and irresponsible." Richard A. Warshak, *Payoffs and Pitfalls of Listening to Children* (Family Relations, Vol. 52, No. 4, 373-84, at 376 (October 2003) Statement, p. 26. The Guidelines for Judges promulgated by the ABA is consistent with Dr. Roitman's opinion and the opinion of, basically, all leading experts in the field that empowering

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[2]Presumably, no expert in his or her right mind would be willing to opine that it is in the best interest of 14 year old children to be empowered in their relationship with their parents to issue an order to a parent to modify the court ordered custody arrangement on a weekly basis and the parent must obey.

children in their relationship with either parent is not in the children's best interest, providing, "it is not the [adolescent's] responsibility to make a decision about what is in their best interests." Statement, p. 27.

Other appellate court decisions, previously cited to the court, are consistent. It was obvious to the appellate courts in those cases that empowering minor children in such a manner was not in their best interests. In *Parker v. Parker*, 112 So. 2d 467 (Ala. 1959), the trial court gave a child the sole right to determine, for at least half of each month, which parent should have his custody. In reversing, the Alabama Supreme Court held:

> **There seems to be little need to catalogue the reasons why such a provision is inappropriate.** It is sufficient to say that it places on this young child the exclusive responsibility of determining, **from time to time**, which parent should have custody. **Thus, a decision as to what is best for the child is made by the child himself and not by the court.**

112 So. 2d at 471 (emphasis added).

Similarly, in *Moore v. Moore*, 331 So. 2d. 742 (Ala. App. 1976), the trial court ordered visitation of the father only if expressly desired by the children. The appellate court found this to be an abuse of discretion and serious error, ruling, "The responsibility for the cultivation of that relationship should rightfully be upon the father, and the mother, not upon the child. **To so place it is to probably destroy it,**

not protect it." 331 So. 2d. at 744 (emphasis added).

And finally and sadly, we know what happened in this case. Kirk's relationship with Brooke was totally destroyed by Vivian's and Brooke's use of the teenage discretion provision.[3] As a foreseeable consequence, Kirk may never see Brooke again and will likely not be able to have a relationship with Brooke for the rest of his life.[4] Although the sole consideration for the court is, appropriately, the best interests of the children, the adverse impact upon the parents who are and will be foreseeably alienated by the use of teenage discretion provisions cannot be overstated – it is devastating.[5]

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[3]Kirk noted, in the prior appeal, the foreseeable consequence of placing the responsibility for the perpetuation of the parent/child relationship on the child, "And importantly, Kirk's relationship with his minor children will probably be destroyed." Fast Track Statement, filed April 8, 2015, (No. 66157), p. 16.

[4] A child whose parent has been excluded from his life will not feel closer or yearn more strongly for him. Rather the child will forget about the parent or learn to disdain him. "Absence [in this situation] does not make the heart grow fonder; [rather] unfamiliarity breeds contempt." Chaim Steinberger, *Father? What Father? Parental Alienation and Its Effect on Children – Part Two*, (NYSBA Family Law Review 2006) at 9 (Citations omitted).

[5]"When an alienator parent's conduct leads a child to reject the other parent, the alienated parent's emotional response usually includes a 'sense of powerlessness and frustration'; 'stress, loss, grief, anger, and fear'; and feelings of pain, anxiety, deficiency, humiliation, and being unloved. As one self-proclaimed alienated parent noted, 'To have that human connection [between oneself and one's child] taken away from you is probably one of the most difficult and painful things for any parent to deal with.' . . . Ultimately, '[t]he [alienated] (continued)

In addition to the problems noted above, the existence of a teenage discretion provision also motivates a manipulative parent to alienate the other parent from the children. The manipulative parent incites the children to hate the other parent so they will utilize their power under the teenage discretion provision. This places the children at tremendous risk of long term harm. Studies have established that children who are the victims of parental alienation "grow up with warped consciences, having learned how to manipulate people as the result of their parents behavior. Some grow up with enormous rage, having understood that they were used as weapons. Some grow up guilty, with low self-esteem and recurrent depression." Demosthenes Lorandos et al, *Parental Alienation–the Handbook for Mental Health and Legal Professionals* (Charles C. Thomas 2013) at 19. Studies indicate that such children, as adults, have "high rates of low self-esteem to a point of self-hatred, significant episodes of depression . . ., a lack of trust in themselves and in other people, and

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(continued) parent experiences the anguish of the loss of a child,' which in turn causes that parent immense mental pain and suffering. This is similar to the loss of child to death, but in some ways, it can seem worse to the alienated parent because the alienated parent's feeling of loss is combined with her continuing concern for the child. Even though these alienated parents want to restore their relationship with their children and will 'try anything to end the impasse,' eventually some alienated parents give up on the parent-child relationship. Some have even attempted suicide." Sandi S. Varnado, *Inappropriate Parental Influence: A New App for Tort Law and Upgraded Relief for Alienated Parents*, 61 DePaul L. Rev. 113, 125 (2011) (citations omitted).

alienation from their own children." Such children, as adults, also "had difficulty trusting anyone would ever love them." *Id.* at 19. This is why, "Experts regard the attempt to poison a child's relationship with a loved one as a form of emotional abuse. As with other forms of abuse, our first priority must be to protect children from further damage." Richard A. Warshak, *Divorce Poison*, 2nd Ed., (Regan Books 2010, p. 8. The emotional damage being caused is just as damaging as physical abuse. "We continue to find that this form of social-psychological child abuse is likely to be as damaging as physical abuse." Stanley S. Clawar & Brynne V. Rivlin, *Children Held Hostage*, 2nd Ed. (ABA 2nd 2013), xxvii.[6]

This court's prior decision, unfortunately for unsuspecting parents and their innocent children, condones and legitimizes a provision which empowers minor children to issue orders to their parents, which their parents must obey. For whatever reason, what is common sense and obvious to all the best experts in the field, other appellate courts which have addressed the issue, and the ABA, was not recognized by the majority in *Harrison*. Just as Dr. Roitman opined and predicted, Kirk's relationship with Brooke was totally destroyed by Vivian's and Brooke's use of the

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[6]The findings contained in *Children Held Hostage* (2nd Ed. 2013) are the result of a thirty-four year research study commissioned by the Family Law Section of the American Bar Association covering approximately 1,000 cases. *Id.* at 409.

teenage discretion provision. This court should be seriously concerned about how many other parent/child relationships are being, and will continue to be, destroyed through the use of teenage discretion provisions, as a consequence of this court's decision in *Harrison*.

The majority in *Harrison* noted, "In any action for determining physical custody of a minor child, 'the sole consideration of the court is the best interest of the child." NRS 124.480(1); *see Ellis*, 123 Nev. At 149, 161 P.3d 242." 376 P.3d at 176. In this context, the majority set forth the standard, "We have held that '[p]arties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy.'"[7] *Rivero v. Rivero,* 125 Nev. 410, 429, 216 P.3d 213, 226 (2009). It is respectfully submitted that if the "sole consideration of the court is the best interest of the child" and the provision is clearly not in the best interest of the child, then it is a violation of public policy. This is especially true where the provision is so terribly harmful to the child, not only during childhood, but for the rest of her life!

The fact that teenage discretion provisions are contrary to the best interest of children should supercede any notion of "freedom of contract." This point is

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[7]This standard erroneously assumes parents are being properly advised of the import of a teenage discretion provision when all indications are that just like Kirk, they are not. *See* Statement, p. 34-38.

illustrated as follows. Assume both parents agreed, utilizing "freedom of contract," that a child, upon turning 14 years of age, will have the tip of a finger cut off. This court would obviously conclude that the parents' agreement is not in the child's best interest and is therefore against public policy, despite notions of freedom of contract. However, arguably, the harm to such a child would be far less than the harm a child would foreseeably suffer under a teenage discretion provision.

The unsuspecting parents, who must avail themselves of family court, and their innocent children of this State, are crying out for this court's help. What has happened in this case is tragic and could have been avoided. To let it happen again to this family and to many thousands of other families would be unimaginable. This court is respectfully urged, as soon as possible, to hold oral argument and to issue an opinion that stops foreseeable significant harm being caused by teenage discretion provisions.

DATED this 27th day of February, 2017.

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CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date the foregoing was 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:

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DATED: 2/27/18

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