IN THE SUPREME COURT OF THE STATE OF NEVADA

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

REPLY IN SUPPORT OF MOTION FOR CONFESSION OF ERROR AND ORAL ARGUMENT

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Respondent delayed this appeal since November 22, 2017, but now claims there has been no prejudice. Child custody appeals are fast-tracked because they involve **child custody**. Respondent's frivolous claims of no prejudice fly in the face of the policy behind the fast-track program.[1]

The prejudice caused by Respondent's delay was set forth in Appellant's fast track statement. Both the trial court and the independent expert expressed serious concerns about the harm being caused to Rylee by being overly empowered under the teenage discretion provision, and the independent expert opined that action must be taken to protect Rylee from harm. Dr. Paglini, who made a recommendation for reunifying Brooke and Kirk (9A.App.1953), observed that Brooke **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). Upon reading Dr. Paglini's report, the court accurately concluded that Brooke was improperly empowered through the teenage discretion provision; the intent of the provision was eviscerated; and "the same seeds have been planted with Rylee." 13A.App.2894.

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[1] Respondent's opposition is 15 pages in length, thereby violating the 10-page limit in NRAP 27. But the clerk's office filed it anyway. Additionally, the court may consider this reply as also constituting opposition to Respondent's "countermotion."

The trial court's concern that Vivian is planting the same seeds with Rylee is consistent with Dr. Paglini's more recent opinions 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.[2] 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 would hate to see something like that happen to Rylee. 16A.App.3492. Given 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. *See* Statement, p. 18-20. It has now been over a year since Dr. Paglini's unequivocal testimony that the over empowerment of Brooke was not in her best interest, and that the same thing should not happen to Rylee; and unless changes are made, Rylee will eventually no longer talk to Kirk.

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[2] Dr. Ali, the children's therapist, also opined that Brooke had been overly empowered. 15A.App.3386.

Therefore, the over empowerment of Rylee under the teenage discretion provision must be stopped as soon as possible; thus, the teenage discretion provision itself must be nullified as soon as possible. There is no merit to Respondent's claim that there is a lack of prejudice resulting from these months of delay caused by Respondent's failure to comply with this court's order and rules.

Respondent's fast track response was due on November 22, 2017. The court granted her requests for extensions until December 15, 2017. As of January 18, 2018, she had not filed a fast track response and had not communicated with the court. On January 18, 2018, the court, *sua sponte*, granted Respondent an additional extension of 45 days until January 29, 2018 (from December 15, 2017 until "within 11 days" of January 18, 2018). Importantly, the court, in the January 18, 2018 order, warned Respondent, "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**." (Emphasis added). Despite knowing that the failure to file a response on or before January 29, 2018 would "result in this appeal being decided without a fast track response from respondent," Respondent failed to obey the order.

In flagrant violation of this court's order, Respondent attempted to file a response 30 days late on February 28, 2018. As it should have been, the response was

rejected by the clerk. Respondent now offers no excuse for her failure to obey this court's order or for her one-month delay in filing her fast track response.[3]

Undaunted by this court's clear January 18, 2018 order and the rejection of her late fast track response, she now has filed a one-sentence countermotion requesting permission to file a proposed fast track response. Her motion is in total disregard of this court's January 18, 2018 order, is not contemplated or provided in the rules, is not a logical countermotion to a motion for confession of error, is another blatant attempt to "file" an unauthorized and expressly prohibited response, and, together with the attached proposed response, should be stricken.

Respondent has included arguments in her "opposition" which are irrelevant to a motion for confession of error and which she is already precluded from making based upon this court's order that the appeal will be decided "without a fast track response from respondent." Respondent is estopped from throwing in her "opposition" such baseless arguments as law of the case doctrine, speculation, and ripeness that could have been made in a timely filed fast track response. Similarly, Respondent's conclusory baseless assertions that there has been no harm to Brooke, also have no place in her "opposition." Although Respondent makes multiple factual

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[3] Respondent's opposition and countermotion do not contain an excuse for her violation of this court's order. She should not be allowed to offer an excuse for the first time in any reply in support of her countermotion.

assertions without any citation whatsoever, Respondent's opposition cites to the attached Response itself, which she is precluded from filing, as support for her baseless assertions. *See* Opposition, p. 11, l. 19-21. The baseless assertions also fly in the face of Dr. Paglini's opinion that he would hate to see happen to Rylee what happened to Brooke.

If this court's orders mean anything, and if the rules mean anything, Appellant's motion should be granted and Respondent's "Countermotion" should be denied.

DATED this 7th day of March, 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:

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

DATED: 3/7/18

Vicki Shapiro, Assistant to
ROBERT L. EISENBERG