

IN THE SUPREME COURT OF THE STATE OF NEVADA

KIRK ROSS HARRISON,

Appellant,

vs.

VIVIAN MARIE LEE HARRISON,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court
NO. 72880

MOTION FOR LEAVE TO FILE FAST TRACK REPLY
IN EXCESS OF STANDARD WORD LIMIT

Appellant Kirk Harrison hereby moves for permission to file a fast track reply, with a word count in excess of the standard limit. On March 23, 2018, respondent Vivian Harrison filed her fast track response. This was nearly five months after Kirk filed his fast track statement. Vivian's fast track response was filed after her counsel ignored extended time limits set by this court, after this court threatened her counsel with sanctions, and after Kirk filed a motion seeking a determination of Vivian's confession of error.

Kirk believes that Vivian's response contains statements and arguments that are not supported by the record or the law. Therefore, Kirk seeks a fair opportunity to file a reply.

Fast track child custody appeals are governed by NRAP 3E. That rule does not explicitly authorize the filing of a reply. The Nevada Appellate Practice

Manual (2016 Edition) indicates that NRAP 3E(e)(2) provides “implied authority” for a reply, because this rule establishes a word count limit for a reply. *Id.* at 18-15.

The manual also contains a “practice tip,” indicating that the absence of express authority for a reply “could be a transcription error that derived from the drafter’s use of the criminal fast-track rules as a template for the child custody fast-track rules.” *Id.* The manual recommends that the “better practice might be to file a motion seeking leave to file the reply.” *Id.* at 18-15 -- 18-16.

As noted above, Kirk believes Vivian’s fast track response contains inaccurate facts and legal discussions. A reply will provide the court with a more accurate view of the case, thereby allowing the court to perform a more accurate analysis of the issues.

Additionally, Vivian’s fast track response contains an extensive discussion of Dr. Paglini’s report, with five and one-half pages of the response devoted to this subject. Response at pp. 10-15. As Kirk pointed out in his opposition to Vivian’s motion to expand the size of the response, Kirk had significantly edited his fast track statement by deleting an analysis of Dr. Paglini’s report. Opp. 11/28/17 at p. 1. Yet Vivian’s proposed response contained extensive discussions of the report; consequently, Kirk’s opposition requested: “In the event that Respondent is allowed to provide ‘an analysis of Dr. Paglini’s report,’ Appellant

should be afforded the opportunity to reply, *inter alia*, to that analysis.” Opp. at p.

4. Although this court’s order of December 12, 2017 granted Vivian’s motion for excess words in the fast track response, the court did not address Kirk’s request for excess words in the fast track reply (to deal adequately with Vivian’s arguments about Dr. Paglini’s report).

Under these circumstances, and in the interests of fairness, Kirk should be allowed to file a reply.

Regarding the word count, NRAP 3E(e)(2) allows 2,333 words for a fast track reply. When respondent moved for excess words for her fast track response, Kirk opposed the motion, but Kirk alternatively argued that if the court granted excess words for the response, the court should similarly grant a request for excess words for Kirk’s reply. The court granted Vivian’s motion, allowing a fast track response consisting of no more than 6,686 words. This was an increase of approximately 38 percent over the usual word limit for a fast track response. Kirk requests that he be treated the same as Vivian, for purposes of expanding the size of his fast track reply. The rule contemplates a limit of 2,333 words for the reply. An increase of 38 percent would calculate to a limit of 3,220 for the reply.

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Accordingly, Kirk requests permission to file a reply that consists of no more than 3,220 words. The proposed reply is being submitted with this motion.

DATED: 4/17/18

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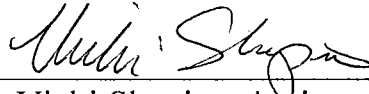
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CERTIFICATE OF SERVICE

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: 4/17/18



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