

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 REPLY

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Appellant hereby replies to Respondent's fast track response, as follows:

A. Vivian Violated the Teenage Discretion Provision.

Respondent alleges: "Neither Brooke nor Vivian ever suggested that Brooke's actions were based upon the exercise of the teenage discretion provision." Response, p. 25. This is false.

Brooke told Dr. Ali that when she was 16 years old she would be empowered under the teenage discretion provision to live with Vivian full time. 15A.App.3360;11A.App.2448;14A.App.3157;15A.App.3361-3362;11A.App.2449;14A.App.3158. 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).

B. The Court-Appointed Expert Opined that Steps Must Be Taken to Protect Rylee.

Vivian argues that Kirk's contentions regarding Rylee are not ripe. Response pp. 23-24. Vivian's argument is meritless in the face of Dr. Paglini's opinion that it is not in Rylee's best interest to continue to be empowered to determine what she will do, and when she will do it, and that something must be done to protect Rylee. 16A.App.3484.

It has now been over a year since Dr. Paglini testified that over-empowerment of Rylee is not in her best interest; that he would hate to see happen to Rylee what has happened to Brooke; and unless changes are made, Rylee will eventually no longer talk to Kirk. *See* Statement, p. 18-20. The over-empowerment of Rylee under the teenage discretion provision must be stopped as soon as possible and before what happened to Brooke happens to Rylee. The teenage discretion provision was utilized by Vivian and Brooke to destroy Kirk's relationship with Brooke. The provision must be nullified before Vivian utilizes the "eviscerated" provision to destroy Kirk's relationship with Rylee. This issue is anything but premature.

C. Respondent's Claim that She Temporarily took the Car Keys and Cell Phone from Brooke in a Failed Effort to Cause Brooke to Comply with the Custody Order is an Insulting Ruse.

Respondent acknowledges that "Brooke was not visiting her father." Response, p. 8. However, she then attempts to mislead this Court into believing that Vivian tried to get Brooke to comply with the 50/50 joint physical custody agreement by claiming that Vivian temporarily took Brooke's car keys and cell phone from her, in an effort to compel Brooke to comply. Response, p. 8-9.

Vivian has no explanation as to why she did not keep the car keys and cell phone until Brooke fully complied with the Custody Order. With Brooke not

having a car, Vivian could have simply driven Brooke to Kirk's home when Brooke was supposed to be with Kirk. Vivian also has no explanation as to why, if Vivian truly believed Brooke was not complying with the Custody Order by refusing to visit her father, Vivian bought Brooke a new car for her 17th birthday. 10A.App.2307.

D. Respondent's Claim that Kirk Wanted Brooke in an "out of state therapeutic program" is Misleading and Unsupported.

Respondent alleges: "[Kirk] suggested that Brooke be enrolled in an 'out of state therapeutic program' and that Vivian should 'enroll in therapy' because of her 'severe problems' and because she is an alienating parent. (15.AA.3320)."

Response p. 10.

Respondent's citation is to a page in Dr. Paglini's report. The quoted language does not exist. On the following page there is a reference to a "residential parental alienation program." Both of these references connote something entirely different than what Kirk actually proposed. Kirk never proposed that Brooke be sent out of state by herself to some program.

Kirk proposed a four day reunification program with a 100% success rate, in which Kirk, Vivian and both children would participate. This program does not focus on the past, is not critical of either parent, and does not blame either parent

for the conflict. This program reestablishes in the children their ability for empathy and compassion. 9A.App.1999-2003;2051-2061;10A.App.2120-2124.

E. Brooke Totally Rejected Kirk and had No Meaningful Contact with Him By the time of the Evidentiary Hearing on February 1, 2018.

By the end of the evidentiary hearing on February 1, 2018, there was no doubt that Kirk had lost all meaningful contact with Brooke, and this was starting to happen to Rylee. 16A.App.3433. During his testimony on February 1, 2017, Dr. Paglini made it clear that what had happened since his report of more than a year earlier was not what he had envisioned, and he now had “significant concerns” that Brooke had “hardly spent any time at her father’s house,” testifying: “So I would have significant concerns about that whether that’s empowerment or something else.”¹ 16A.3491.

When a minor child totally rejects a parent in the way Brooke has rejected Kirk, the issue is whether: (1) the rejection was caused by some horrific conduct by the rejected parent, and the child’s rejection is reasonable, or (2) the rejection was caused by manipulative conduct of the other parent, which alienates the

¹Dr. Paglini’s testimony on February 1, 2017 was much more relevant, probative, and current than the old report of January 25, 2016, because it constituted his most recent opinions, and he had the benefit of knowing events which occurred after the earlier report.

targeted parent from the child, and the child's rejection is unreasonable and disproportionate to the actual conduct of the targeted parent. Demosthenes Lorandos et al, *Parental Alienation—the Handbook for Mental Health and Legal Professionals* (Charles C. Thomas 2013) at 5-6;21;126-131.

A minor child typically does not reject a parent because the parent is less than perfect or because they had occasional disagreements or arguments.² In order for Brooke to totally reject Kirk, knowingly violate both the joint physical custody order and the court's order requiring joint therapy sessions, and make the decision to leave her little sister, Rylee, for one-half the time, either Kirk is a really bad father who severely abused or neglected Brooke, or Vivian alienated Kirk from Brooke. There is no evidence of the former³ and there is overwhelming evidence of the latter. 9A.App.1857-1875;6A.App.1214-1215.

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²Respondent conceded that Brooke told Dr. Paglini that "she loved Kirk, but that they had occasional disagreements and arguments." Response, p. 11.

³Dr. Paglini testified that Kirk really did nothing wrong. 16A.App.3581-3587. He stated: "Brooke really does not offer evidence of her father's bad character." 15A.App.3367.

F. Dr. Paglini Based his Conclusions in his January 2016 Report Upon Material Misrepresentations made to Him by Vivian and Brooke.

As noted in the Statement, Brooke had previously told Dr. Ali on several occasions that she hates Kirk, does not love him, and does not want a relationship with him. Brooke previously told Kirk the same things. Statement, p. 29. Despite these facts, it is clear that Vivian's agenda was to convince Dr. Paglini that she had not alienated Kirk from Brooke. Therefore, both Vivian and Brooke, who is enmeshed in Vivian's agenda, both told Dr. Paglini, repeatedly, that Brooke does not hate Kirk, she loves Kirk, and wants a relationship with him. *Id.* at 29. As previously noted, Vivian was fully aware this was contrary to what Brooke had been telling Dr. Ali, as Vivian had been debriefing Brooke after each of her sessions with Dr. Ali. 13A.App.2774;11A.App.2443.

Based upon Brooke's repeated statements to Dr. Paglini that she does not hate Kirk, she loves Kirk, and she wants a relationship with Kirk (which Dr. Paglini documented throughout his report), Dr. Paglini concluded that Brooke had not pathologically rejected Kirk.

15A.App.3323;3326;3328;3333;3341;3351;3367;3375; Statement at 29.

Brooke's statements were also the primary reasons Dr. Paglini concluded there had been no alienation. Dr. Paglini specifically noted that the prognosis in

this case is favorable because Brooke told him she has a willingness to address issues with Kirk and that she loves Kirk. 15A.App.3375.

Vivian did not foresee that Dr. Paglini would recommend and the court would order Dr. Ali, who knew the truth, to conduct the joint reunification sessions with Brooke and Kirk. Once Vivian learned that Dr. Paglini recommended and the court ordered two-hour weekly sessions with Dr. Ali, Vivian directly and through Brooke, used every disingenuous ploy possible to prevent those weekly sessions from taking place. 11A.App.2444.

Vivian's and Brooke's false statements to Dr. Paglini placed Brooke in the untenable position of having go forward with Vivian's false narrative with the two people whom Brooke knew were fully aware Vivian's false narrative was false. Vivian, alone, is responsible for doing this to Brooke. But for Vivian's enmeshment of Brooke in this false narrative, this never would have happened. 11A.App.2444. This is the reason Brooke immediately resisted and soon refused to attend the court ordered joint reunification sessions with Kirk and Dr. Ali. Brooke cut the second session short, stating she hated Kirk, does not love Kirk, Kirk is a bad and mean person, does not want a relationship with Kirk and emphatically stated she would not participate in any more sessions. 9A.App.1983;10A.App.2101;15A.App.3385-3387.

Contrary to Vivian's arguments in her Response, Brooke's statements to Dr. Ali, Kirk and then to both Dr. Ali and Kirk are clear evidence that Vivian has successfully alienated Kirk from Brooke. Brooke's refusal to even acknowledge Kirk's existence at the orthodontist's office, after not seeing her father for two months, is also consistent with her statements that she hates Kirk and Kirk has been alienated from her. 8A.App.1718-1719.

Brooke's statements to Dr. Paglini regarding Brooke's *behavior* towards Kirk were truthful and further evidence of the alienation of Kirk from Brooke: Dr. Paglini concluded "there is no doubt, Brooke has rejected her father...," 15A.App.3362; Dr. Paglini concluded that Brooke is primarily disengaged from Kirk when she is in his home, 15A.App.3362; Brooke's conduct towards Kirk is rude and inappropriate, 15A.App.3366; Brooke calls her father "Kirk" and her mother "Mom," 15A.App.3333;3366; Brooke has virtually no contact with Kirk when she is in his home, 15A.App.3335; Brooke does not trust Kirk, 15A.App.3361; Brooke said that Kirk has not earned the title of "Dad" since the divorce, 15A.App.3361, and; Brooke treats Kirk very poorly.⁴ 15A.App.3368.

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⁴In sharp contrast, Brooke is aligned with Vivian and would not change a thing about Vivian. 15A.App.3326.

In evaluating whether there is parental alienation, the evaluation must focus upon the *behavior* of the child toward the target parent. *Parental Alienation* at 22. For obvious reasons, such a diagnosis should not be based merely upon the claims of the alienating parent and the enmeshed child's professed feelings, which are in direct conflict with all of the child's exhibited behavior. *Parental Alienation* at 129. This is especially true when the alienating parent and the enmeshed child are motivated to not tell the truth.

This point is aptly illustrated in this case, as Dr. Paglini thought it was very important that: [1] Vivian wants Brooke to have a great relationship with Kirk. 15A.App.3324-3325; [2] it did not appear Vivian was pursuing primary custody of Brooke 15A.App.3372; [3] "Mrs. Harrison wants Brooke to be in her father's life, she is not trying to eradicate Mr. Harrison from Brooke's life, there is no campaign of degradation." 15A.App.3372, and; [4] "Brooke does not perceive her mother as a victim, nor does she perceive her mother being persecuted by her father." 15A.App.3368.

Dr. Paglini was unaware of the truth, which is contrary to what he was told by Vivian and Brooke: [1] Vivian represented to Nevada State High School that Brooke did not have a father by omitting Kirk as Brooke's father and by omitting Kirk as a person to contact in case of emergency on Brooke's student enrollment

form. 15A.App.3390-3392; [2] Vivian refused to give Brooke's class schedules to Kirk for almost a year. 9A.App.1986-1987; [3] Vivian filed a motion for primary custody and appealed the denial of that motion. 8A.App.1682-1685;9A.App.1954; 1964-1975; [4] Vivian's campaign to alienate Kirk from Brooke and Rylee had been going on since shortly after the filing of the motion for temporary custody in September of 2011. 9A.App.1857-1875, and; [5] Brooke was very upset over the medical billing issue and believed that Kirk had victimized Vivian (and her credit rating) – he is a “bad and mean person.” 8A.App.1630; 9A.App.1984. 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. Brooke did not want to see Kirk any longer after the medical billing issue. 16A.App.3522.

All of Brooke's behavior towards Kirk after Dr. Paglini's report is indicative of a child who has alienated her father, and such behavior is completely inconsistent with Vivian's and Brooke's repeated statements that Brooke loves Kirk and wants a relationship with him.

G. Rylee Must be Protected Now to Avoid Long Term Harm.

The stakes are very high for Rylee because if something is not done to protect her now, she is at substantial risk of significant life long harm.

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The only expert opinion offered in this case regarding teenage discretion was by Dr. Norton Roitman. 7A.App.1390-1402. Dr. Roitman opined that a teenage discretion provision is ill-advised and can be deeply damaging, and further opined: “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 the children are “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.

We know what happened in this case. Kirk’s relationship with Brooke was destroyed by the teenage discretion provision.⁵ As a foreseeable consequence, Kirk may never see Brooke again and will likely not have a relationship with

⁵In the prior appeal, Kirk correctly predicted the effect of the provision: “And importantly, Kirk’s relationship with his minor children will probably be destroyed.” Fast Track Statement, filed April 8, 2015, (No. 66157), p. 16.

Brooke for the rest of his life.⁶ 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.⁷

A teenage discretion provision also motivates a manipulative parent to alienate the other parent from the children, inciting 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 psychological problems such as enormous rage, low self-esteem to the point of self-hatred, significant episodes of depression, and difficulty trusting that anyone will love them. *Parental Alienation* at 19. “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

⁶A child whose parent has been excluded from his/her life will not feel closer or yearn more strongly for the parent; rather, the child will forget about and learn to disdain the parent. “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.

⁷Rejection by a child can cause extreme emotional distress to the alienated parent, similar to loss of a child by death (and in some ways even worse). 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).

priority must be to protect children from further damage.” Richard A. Warshak, *Divorce Poison*, 2nd Ed., (Regan Books 2010, p. 8. “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.

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

The majority in *Harrison* noted that in a custody dispute, “the sole consideration of the court is the best interest of the child.” 376 P.3d at 176. The

majority held that parties are free to contract, if the contracts are not unconscionable, illegal, or in violation of public policy. *Id.* at 175. 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 supersede any notion of freedom of contract. This point is illustrated as follows. Assume both parents agreed, utilizing their freedom of contract, that each of their children, 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 children’s best interest and is therefore against public policy, despite notions of freedom of contract. However, arguably, the harm to such children would be far less serious than the emotional harm children will foreseeably suffer under a teenage discretion provision.

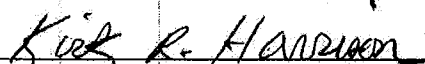
The unsuspecting parents, who must avail themselves of family court, and their innocent children of this State are crying out for this court’s help. What has happened in this case is tragic and could have been avoided. To let it happen

again to this family and to many thousands of other families would be devastating.

This court is respectfully urged, as soon as possible, to stop the foreseeable significant harm that is being caused by teenage discretion provisions.

DATED this 17 day of April, 2018.


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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this fast track reply 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 reply complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it contains 3,196 words (per pending motion for excess words).

3. Finally, I certify that the information provided in this fast track reply is true and complete to the best of my knowledge, information, and belief.

DATED: 4/17/18


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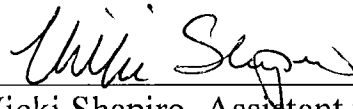
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CERTIFICATE OF SERVICE

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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