

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 PHILIP R. and REGINA R.  
3 Petitioners,  
4 v.  
5 EIGHTH JUDICIAL DISTRICT  
6 COURT, CLARK COUNTY,  
7 NEVADA and THE HONORABLE  
8 CYNTHIA GUILIANI, DISTRICT  
9 COURT JUDGE  
10 Respondents  
11 and  
12 STEPHANIE R., JOEY R., CLARK  
13 COUNTY DEPARTMENT OF  
14 FAMILY SERVICES; and E.R., A  
15 MINOR,  
16 Real Parties in Interest.

CASE NO: 73198

Electronically Filed  
Sep 13 2017 03:50 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

13 IN THE MATTER OF E.R.  
14 A MINOR

CASE NO: 73272

16 CLARK COUNTY DEPARTMENT  
17 OF FAMILY SERVICES; AND  
18 CLARK COUNTY DISTRICT  
19 ATTORNEY'S OFFICE,  
20 Petitioners  
21 v.  
22 EIGHTH JUDICIAL DISTRICT  
23 COURT, CLARK COUNTY,  
24 NEVADA and THE HONORABLE  
25 CYNTHIA GUILIANI, DISTRICT  
26 COURT JUDGE  
27 Respondents  
28 and  
PHILIP R., REGINA R., STEPHANIE  
R., JOEY R., and E.R. A MINOR,  
Real Parties in Interest.

**PHILIP R. AND REGINA R.'s REPLY IN SUPPORT OF PEITION FOR  
WRIT OF MANDAMUS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I**

**INTRODUCTION**

The Petitioners, Philip and Regina Rivera (The Riveras) filed a petition for writ of mandamus on June, 9, 2017. The Department of Family Services (DFS) filed a separate petition, seeking relief consistent with the Riveras' request. Specifically, both DFS and the Riveras are seeking an order from this Court directing the district court to reverse its decision to remove the minor child E.R. from her adoptive home and place her with former relatives who she had never met.

Based on those petitions, this Court issued a stay of the district court order on July 13, 2017, and invited answers from Joey and Stephanie Rozier (the Roziers), the former relatives, and from counsel for E.R. They each filed answers on August 10 and August 15, respectively. This Reply is limited to addressing legal points raised in Stephanie and Joey R.'s answer that were not specifically addressed in the the Riveras' original Petition. Specifically, the Roziers' contentions regarding the meaning of Bopp v. Lino are wholly unsupported by an entire reading of the case and the statutory scheme under which it was decided. Furthermore, their contention that NRS128.110 means that the familial preference exists after termination is unsupported by the text of the statute and the purpose of the inheritance exception.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

II

ARGUMENT

**A. The Familial Preference Ends at Termination of Parental Rights under  
*Bopp v. Lino*, 110 Nev. 1246, 885 P.2d 559 (Nev., 1994)**

The Roziers contend that the *Bopp* case holds that the familial placement preference ends the time of adoption. This is a complete misreading of the holding in *Bopp*. While the *Bopp* case recognized that adoption terminated any connection to the minor child's former family for all purposes under NRS 127.160, it did not hold that a familial preference for placement or visitation existed beyond termination. In fact, the *Bopp* court explicitly held the contrary. Beginning on page 1251, the Court explained that NRS 127.171 and NRS 125A.330<sup>1</sup> controlled whether the former relatives of the child could have court ordered visitation rights following adoption.

NRS 127.171 states that "1. In a proceeding for the adoption of a child, the court may grant a reasonable right to visit to certain relatives of the child *only if a similar right had been granted previously pursuant to NRS 125A.330.*" Explaining this statute, the *Bopp* court stated the following:

---

<sup>1</sup> NRS 125A.330 no longer exists and was replaced by NRS 125C.050 in 1999 five years after the *Bopp* decision.

1 NRS 127.171 clearly and unambiguously limits visitation rights to the  
2 subject of an adoption to those persons who had previously obtained  
3 similar rights pursuant to NRS 125A.330, and under no other  
4 circumstances.

5 In other words, visitation based on the familial preference could only exist  
6 after adoption *if* it had already been preserved via NRS 125A.330. Below is the text  
7 of NRS 125A.330 in relevant part as it existed at the time of the *Bopp* decision:  
8

9 2. If the parental rights of either or both natural parents of a  
10 child are relinquished or terminated, and the child is placed in the  
11 custody of a public agency or a private agency licensed to place  
12 children in homes, the district court in the county in which the child  
13 resides may grant to the grandparents, parents and other children of  
14 either parent a reasonable right to visit the child during his minority *if*  
15 *a petition therefor is filed with the court before the date on which the*  
16 *parental rights are relinquished or terminated.* In determining  
17 whether to grant this right to a petitioner, the court must find that the  
18 visits would be in the best interests of the child in light of the  
19 considerations set forth in subsection 1.

20 NRS 125A.330(2)(1991 Statutes of Nevada, Page 1176, emphasis added)<sup>2</sup>. The  
21 foregoing statute requires explicitly that no visitation can be granted to a family  
22 member following the termination or relinquishment of the parents' rights unless a  
23 petition for such visitation was filed prior to termination. After considering the full  
24

---

25  
26 <sup>2</sup> The current iteration of the statute exists as NRS 125C.050, and preserves the  
27 requirement for the visitation petition to be filed prior to termination or  
28 relinquishment.

1 explanation that *Bopp* provides regarding the familial preference, there is no basis  
2 to claim that the familial preference continues after the termination of parental  
3 rights. To the extent that *Bopp* could be interpreted to preserve a familial preference  
4 beyond termination, this Court should explicitly clarify the case to prevent future  
5 misinterpretation.<sup>3</sup>  
6

7  
8 The Roziers further attempt to support their claim by citation to NRS 128.110  
9 as proof that the familial preference exists beyond termination of parental rights.  
10 That is not what the statute says. What the statute does say is that the ONLY  
11 familial connection that exists after termination is the child's right to inherit from  
12 his/her parents until adoption occurs.<sup>4</sup> The legislative intent of this limited  
13  
14  
15  
16

17  
18 <sup>3</sup> It is also worth noting that the termination and adoption that occurred in *Bopp* was  
19 a relinquishment and step-parent adoption. In such a case, the termination and  
20 adoption usually occur simultaneously. In *Bopp*, the order terminating parental rights  
21 was filed just a few days before the order of adoption, making the distinction  
22 between termination and adoption relative to establishing NRS 125A.330 visitation  
23 all but immaterial. *Id.* At 1248. Had there been a significant amount of time between  
24 termination and adoption, the *Bopp* court likely would have been more deliberate in  
25 establishing that the familial preference ends at visitation.

26 <sup>4</sup> The legislature carved out this limited exception in 2011. It's worth noting that the  
27 Legislature could have, but elected not to, make any changes regarding the language  
28 of NRS 127.171, which prevents the Court from granting any post-adoption contact

1 preservation is obvious; the State of Nevada does not want to make financial  
2 orphans of the State so long as there is a potential resource to tap into when the  
3 child has yet to be adopted. Since the child has no parents in the window between  
4 termination and adoption, the State is solely responsible for the child's financial  
5 support during this period. If one of the former parents dies during this period, it  
6 would provide a potential avenue of financial support for the child pending adoption  
7 that would not otherwise exist without the limited exception in NRS 128.110.  
8  
9

10  
11       However, once adoption occurs, the adoptive parents' financial obligations  
12 to the child begin and the adoptive parents become legally responsible for the  
13 support of their adoptive child under chapter 125B. As such, there is no longer any  
14 reason to preserve a financial connection between the adoptive child and her former  
15 parents, and the right of inheritance from the former parents terminates. The  
16 Roziers' attempt to shoe-horn a familial preference for post-termination placement  
17 or contact into the limited inheritance exception is unconvincing, especially because  
18 the Legislature could have, but did not, add language preserving a familial  
19 preference post-termination.  
20  
21  
22

23 ///  
24  
25  
26

27 \_\_\_\_\_  
28 between the child and former relatives, unless a petition for such contact was filed  
prior to the termination of parental rights pursuant to NRS 125C.050.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**III**

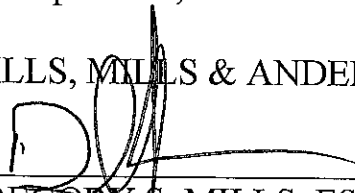
**CONCLUSION**

WHEREFORE, based on the above and foregoing, the Petitioners respectfully requests the following:

1. A Writ of Mandamus directing the Honorable Judge Cynthia Giuliani to:
  - a. Vacate the order changing placement of the minor child Esther Rodriguez from the Petitioners to the Roziers.
  - b. Direct DFS to proceed with the permanency plan of adoption of Esther by the Petitioners.

DATED this 13 day of September, 2017.

MILLS, MILLS & ANDERSON



\_\_\_\_\_  
GREGORY S. MILLS, ESQ.

Nevada Bar No. 8191

DANIEL W. ANDERSON, ESQ.

Nevada Bar No. 9955

703 S. 8<sup>th</sup> Street

Las Vegas NV 89101

Attorney for Movants

1  
2 **CERTIFICATE OF MAILING**

3 I hereby certify that I am an employee of the MILLS, MILLS & ANDERSON  
4 and that on the 13<sup>th</sup> day of September, 2017, I duly deposited for mailing in the  
5 U.S. Mail at Las Vegas, Nevada, postage prepaid thereon, or had hand-delivered, a  
6 true and correct copy of the above and foregoing **PHILIP R. AND REGINA R.'S**  
7 **REPLY IN SUPPORT OF PEITION FOR WRIT OF MANDAMUS** addressed  
8  
9 to the following at their last known address:  
10

11 Tanner L. Sharp, Esq.  
12 Deputy District Attorney – Juvenile Division  
13 601 N. Pecos Road  
14 Las Vegas, Nevada 89101  
15 Attorney for Clark County Department of Family Services


16 John Blackmon, Esq.  
17 2200 Paseo Verde Parkway #350  
18 Henderson, Nevada 89052  
19 Attorneys for Stephanie and Joey Rozier

20 Raymond E. Mckay, Esq.  
21 7251 West Lake Mead Blvd., Ste 250  
22 Las Vegas, NV 89128  
23 Pro Bono CAP attorney for E.R.  
24  
25  
26  
27  
28



1 Emily McFarling, Esq.  
2 6230 W. Desert Inn Road  
3 Las Vegas, NV 89146  
4 Pro Bono co-counsel for E.R.

5 The Honorable Judge Cynthia Giuliani  
6 Clark County District Court Dept. K  
7 601 N. Pecos Rd.  
8 Las Vegas, Nevada 89101

  
TIFFANY WEBER, an employee of the  
MILLS, MILLS & ANDERSON

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28