

1 **NOA**

2 **ALISSA A. COOLEY, ESQ.**

3 Nevada Bar No. 13467

4 **LAW OFFICES OF MARTIN HART, LLC**

5 526 South 7th Street

6 Las Vegas, NV 89101

7 Telephone: (702) 380-4278

8 Facsimile: (702) 384-6006

9 associate@martinhartlaw.com

10 *Attorney for Yesenia Esmeralda Amaya*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 **YESENIA ESMERALDA AMAYA,**

14 **Petitioner,**

15 **vs.**

16 **MILTON ORLANDO GUERRERO**
17 **RIVERA,**

18 **Defendant.**

Case No: D-17-562584-C

Dept. No: N

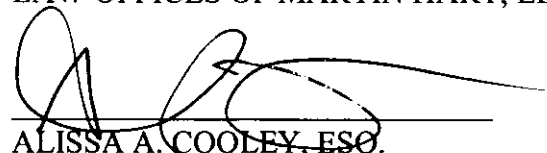
19 **NOTICE OF APPEAL**

20 Notice is hereby given that Plaintiff, YESENIA ESMERALDA AMAYA, appeals to the
21 Supreme Court of Nevada from the Decision and Order filed on the 3rd day of April, 2018 and
22 26th day of April.

23 DATED this 26th day of April, 2018.

LAW OFFICES OF MARTIN HART, LLC

24 By:



25 **ALISSA A. COOLEY, ESQ.**

26 Nevada Bar No. 13467

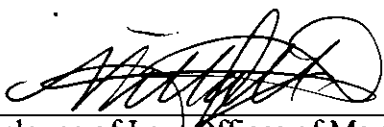
27 526 South 7th Street

28 Las Vegas, NV 89101

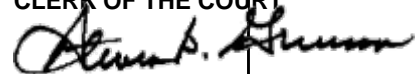
CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing NOTICE OF APPEAL was served on this 26 day of April, 2018, via U.S. mail to the following:

Milton Orlando Guerrero Rivera
Caserio La Garra
Estanzuelas, Usulután
El Salvador



Employee of Law Offices of Martin Hart, LLC



ASTA

ALISSA A. COOLEY, ESQ.

Nevada Bar No. 13467

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Telephone: (702) 380-4278

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associate@martinhartlaw.com

Attorney for Yesenia Esmeralda Amaya

**DISTRICT COURT
CLARK COUNTY, NEVADA**

YESENIA ESMERALDA AMAYA,

Petitioner,

vs.

MILTON ORLANDO GUERRERO
RIVERA,

Defendant.

Case No: D-17-562584-C

Dept. No: N

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement: Yesenia Esmeralda Amaya.

2. Identify the judge issuing the decision, judgment, or order appealed from:

Judge Mathew Harter.

3. Identify each appellant and the name and address of counsel for each appellant:

YESENIA ESMERALDA AMAY

Alissa A. Cooley, Esq.

Nevada Bar #013467

526 South 7th Street

Las Vegas, Nevada 89101

Telephone: (702) 380-4278

Facsimile: (702) 384-6006

associate@martinhartlaw.com

4. Identify each respondent and the name and address of appellate counsel, if known, for

each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

MILTON ORLANDO GUERRERO RIVERA

Current Counsel unknown. Respondent defaulted in underlying action.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission): N/A.

6. Indicate whether appellant is represented by appointed or retained counsel in the district court:

Retained.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained, pro bono.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

Appellant was not granted leave to proceed in forma pauperis but submitted an application to the district court on April 18, 2018. Appellant is awaiting a decision on that application.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):

12/04/2017 Complaint for Custody, Case No. D-17-562584-C.

10. Provide a brief description of the nature of the action and result in the district court, including type of judgment or order being appealed and the relief granted by the district court:

This appeal arises from a Decision and Order filed on April 3, 2018 by the district

1 court. On December 4, 2017, Appellant filed a Complaint for Custody, which was served on
2 Respondent on December 18, 2017. Respondent did not file an Answer, and defaulted on
3 January 9, 2018. On February 28, 2018, Appellant filed a Motion for Findings on the Issue of
4 Special Immigrant Juvenile Status and two declarations in support thereof. Appellant served
5 Respondent with a copy of the motion but he did not respond. The district court vacated the
6 hearing on the motion, set for April 4, 2018, and on April 3, 2018, issued a Decision and Order
7 denying Appellant's Motion. The bases for the denial were that (1) the "1 or both" language in
8 Nevada Assembly Bill 142 and 8 U.S.C. § 1101(a)(27)(J) requires that reunification not be
9 viable with either parent and (2) a custody proceeding does not meet the requirements of
10 Nevada Assembly Bill 142 and 8 U.S.C. § 1101(a)(27)(J) in that in such proceedings, a district
11 court does not place a child into the "custody of a... person appointed by the court." Appellant
12 filed a motion to reconsider the Decision and Order on April 12, 2018. On April 26, 2018, the
13 district court denied the motion. This appeal follows.

14
15
16 11. Indicate whether the case has previously been the subject of an appeal to or original
17 writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number
18 of the prior proceeding:
19

20 N/A.

21 12. Indicate whether this appeal involves child custody or visitation:

22 This appeal stems from a complaint for custody.

23
24 13. If this is a civil case, indicate whether this appeal involves the possibility of
25 settlement:

26 Respondent defaulted in the district court and did not respond to Appellant's Motion
27 for Findings on the Issue of Special Immigrant Juvenile Status. Thus, this case does not involve
28

1 the possibility of a settlement.

2 DATED this 24th day of April, 2018.

3 Respectfully submitted,

4 LAW OFFICES OF MARTIN HART LLC

5 By:

6 ALISSA A. COOLEY, ESQ.

7 Nevada Bar #013467

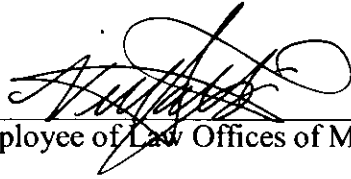
8 526 South 7th Street

9 Las Vegas, NV 89101

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13 Milton Orlando Guerrero Rivera
14 Caserio La Garra
15 Estanzuelas, Usulután
16 El Salvador

17 
18 Employee of Law Offices of Martin Hart, LLC
19
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21
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CASE SUMMARY**CASE NO. D-17-562584-C**

Yesennia Esmeralda Amaya, Plaintiff.
vs.
Milton Orlando Guerrero Rivera, Defendant.

§
 §
 §
 §

Location: **Department N**
 Judicial Officer: **Harter, Mathew**
 Filed on: **12/01/2017**

CASE INFORMATION**Statistical Closures**

04/26/2018 Settled/Withdrawn Without Judicial Conference or Hearing
 04/03/2018 Settled/Withdrawn Without Judicial Conference or Hearing

Case Type: **Child Custody Complaint**

Case
 Status: **04/26/2018 Closed**

Case Flags: **Appealed to Supreme Court****PARTY INFORMATION****Plaintiff**

Amaya, Yesennia Esmeralda
4632 Kathleen CT
Las Vegas, NV 89110

Attorneys

Cooley, Alissa A, ESQ
Retained
 702-380-4278(W)

Defendant

Guerrero Rivera, Milton Orlando
Caserio La Garra
Estanzuelas, Usulután, El Salvador CP 3408
Other

Pro Se
 Unknown(H)

Subject Minor**Guerrero Amaya, Andrea Verenise****DATE****EVENTS & ORDERS OF THE COURT****EVENTS**

04/27/2018



Notice of Appeal
 Filed by: Plaintiff Amaya, Yesennia Esmeralda
Notice of Appeal

04/27/2018



Case Appeal Statement
 Filed by: Plaintiff Amaya, Yesennia Esmeralda
Case Appeal Statment

04/26/2018



Notice of Entry of Order
Notice of Entry of April 26, 2018 Decision and Order

04/26/2018



Decision
Decision and Order Regarding Motion for Reconsideration

04/24/2018



Certificate of Mailing
Certificate of Mailing

04/24/2018



Notice of Entry of Order
Noptice of Entry of Order Establishing Custody, Visitation, and Child Support

04/18/2018



Application to Proceed in Forma Pauperis
Application to Proceed in Forma Pauperis

04/18/2018



Certificate of Mailing
Certificate of Mailing

04/18/2018



Order
 Filed by: Attorney Cooley, Alissa A, ESQ
Order Establishing Custody, Visitation, and Child Support















04/12/2018




Motion to Reconsider
 Filed by: Plaintiff Amaya, Yesennia Esmeralda
Motion for Reconsideration of the District Court's Order Filed April 3, 2018 and for Related Relief

CASE SUMMARY

CASE NO. D-17-562584-C

04/12/2018	 Family Court Motion Opposition Fee Information Sheet Filed by: Plaintiff Amaya, Yesennia Esmeralda <i>Motion/Opposition Fee Information Sheet</i>
04/03/2018	 Notice of Entry of Order <i>Notice of Entry of Decision and Order Regarding SJJS Findings</i>
04/03/2018	 Decision <i>Decision and Order</i>
03/30/2018	 Notice of Entry of Order <i>Notice of Entry of Minute Order</i>
03/21/2018	 Notice of Rescheduling of Hearing <i>Notice of Rescheduling of Hearing</i>
03/01/2018	 Certificate of Mailing <i>Certificate of Mailing</i>
02/28/2018	 Declaration <i>Declaration of Andrea Verenise Guerrero Amya in Support of Motion for Findings on the Issue of Immigrant Status</i>
02/28/2018	 Declaration <i>Declaration of Yesenia Esmeralda Amya in Support of Motion for Findings on the Issue of Immigrant Juvenile Status</i>
02/28/2018	 Motion <i>Motion for Findings on the Issue of Immigrant Juvenile Status</i>
01/09/2018	 Default Filed by: Plaintiff Amaya, Yesennia Esmeralda <i>Default</i>
12/28/2017	 Summons <i>Summons</i>
12/28/2017	 Declaration of Service Filed by: Plaintiff Amaya, Yesennia Esmeralda <i>Declaration of Service</i>
12/01/2017	 Summons Electronically Issued - Service Pending Party: Plaintiff Amaya, Yesennia Esmeralda <i>Summons</i>
12/01/2017	 Complaint for Custody Filed by: Plaintiff Amaya, Yesennia Esmeralda <i>Complaint for Custody</i>

HEARINGS

05/25/2018	CANCELED Motion (11:00 PM) (Judicial Officer: Harter, Mathew) <i>Vacated</i> <i>Pltf Motion for Reconsideration of the District Courts Order Filed April 3 2018 and for Related Relief</i>
05/01/2018	CANCELED Hearing for Custody (9:30 AM) (Judicial Officer: Harter, Mathew) <i>Vacated</i>
04/04/2018	CANCELED Motion (10:00 AM) (Judicial Officer: Harter, Mathew) <i>Vacated</i> <i>Motion for Findings on the Issue of Immigrant Juvenile Status</i>
03/30/2018	 Minute Order (11:00 AM) (Judicial Officer: Harter, Mathew) Events: 02/28/2018 Motion Minute Order - No Hearing Held; Journal Entry Details:

CASE SUMMARY

CASE No. D-17-562584-C

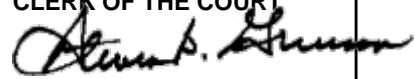
MINUTE ORDER: NO HEARING HELD AND NO APPEARANCES NRCP 1 and EDCR 1.10 state that the procedure in district courts shall be administered to secure efficient, speedy, and inexpensive determinations in every action. Pursuant to EDCR 2.23(c) and NRCP 78, this Court can consider a motion and issue a decision on the papers at anytime without an oral hearing. Plaintiff filed her Motion for Findings on the Issue of Immigrant Juvenile Status (Motion) on February 28, 2018. A hearing is currently set for April 4, 2018. This Court discovered persuasive case law that has recently been made from the Nevada Supreme Court and must take this into consideration. IT IS HEREBY ORDERED that the hearing date of April 4, 2018 is VACATED. IT IS FURTHER ORDERED that this Court will issue a decision regarding Plaintiff's Motion by April 16, 2018. A copy of this minute order shall be provided to both parties. ;

12/01/2017

Summons

Guerrero Rivera, Milton Orlando

Served: 12/18/2017



Eighth Judicial District Court

Family Division

Clark County, Nevada

YESENNIA ESMERALDA AMAYA,

Plaintiff,

vs.

MILTON ORLANDO GUERRERO RIVERA,

Defendant.

Case: D-17-562584-D

Dept: N

DECISION AND ORDER

NRCP 1 and EDCR 1.10 state that the procedure in district courts shall be administered to secure efficient, speedy, and inexpensive determinations in every action. Pursuant to EDCR 2.23(c) and NRCP 78, this Court can consider a motion and issue a decision on the papers at anytime without an oral hearing. Further, Plaintiff originally did not ask for a hearing as she submitted on this Court's Chamber's Calendar for consideration without a hearing (EDCR 5.502(i)). This Court subsequently did set a hearing for a prove-up on this matter. However, a case from the Supreme Court of Nevada has since been issued (discussed below) which this Court believes readily disposes of the motion *Special Immigrant Juvenile Status* (SIJS) findings.

AB142. Sec. 1. A person may include in a petition filed or motion made pursuant to chapter 62B, 125, 159 or 432B of NRS a request that the court make the following findings to enable a child to apply for status as a special immigrant juvenile with the United States Citizenship and Immigration Services:

(a) The child has been declared dependent on the court or has been legally committed to, or placed under the custody of, a state agency or department or a person appointed by the court;

(b) The reunification of the child ***with one or both of his or her parents*** was determined not to be viable because of *abandonment, abuse or neglect or a similar basis* under the laws of this State; and

(c) It is not in the best interests of the child to be returned to the previous country of nationality or last habitual residence of the child or his or her parents.

On 01/01/2016, SCR 123 was repealed which prohibited the use of unpublished opinions.

There was also a change to NRAP 36(c)(3), whereby an unpublished opinion can be used for its *persuasive value*. As the SIJS issue at hand is being handled differently in various states, this Court believes *any persuasive value* in Nevada is of use. Therefore, the unpublished case is:

Non-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
☐ Judgment Reached by Trial
Trial Dispositions:
☐ Settled/Withdrawn
☐ Without Judicial Conf/Htg
☐ With Judicial Conf/Htg
☐ By ADR

1 IN THE MATTER OF THE GUARDIANSHIP OF THE PERSONS OF, D.S.M., A MINOR.
2 ROCIO MUNOZ PINO, Appellant., No. 72820, 2018 WL 1447726 (Nev. Mar. 15, 2018)
3 (*hereinafter* "D.S.M."). Pursuant to NRAP 36(c)(3), it is attached hereto as Exhibit 1.

4 Footnote 1 of *D.S.M.* reads as follows: "D.S.M. did not allege that reunification with his
5 mother is not viable and does not challenge the district court's factual finding that reunification
6 with his mother is viable." Accordingly, this Court's reading of this footnote seems to indicate
7 that the Court was following the reasoning as set forth in *H.S.P. v. J.K.*, 223 N.J. 196, 121 A.3d
8 849 (2015), which held that: "[A] finding that an immigrant child's 'reunification with 1 or both
9 of the immigrant's parents is not viable,' as would support SIJS status, **is not established where**
10 **reunification with one or both parents is viable**." This Court is fully aware that some
11 jurisdictions around the country believe that the reunification factor applies to *both* parents.
12 Again, this Court is *persuaded* this is *not* in accordance with Footnote 1 of *D.S.M.* Further, it is
13 noted that Plaintiff relies on the custody order sought as satisfying Subfactor (a). However,
14 Subfactor (a) uses the wording "placed under the custody of . . . a person *appointed* by the court."
15 This Court did *not* "appoint" Plaintiff; she simply sought a common, custodial order.

16 Accordingly, Plaintiff *may* submit a custody order as noted above since Defendant has
17 defaulted. However, her request for this Court to make SIJS findings in this case is DENIED.

18 DATED this 3rd day of April, 2018.




19
20
21 District Court Judge
Mathew Harter 

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSONS
OF, D.S.M., A MINOR.

ROCIO MUNOZ PINO,
Appellant.

No. 72820

FILED

MAR 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order entered in a guardianship proceeding. Eighth Judicial District Court, Family Court Division, Clark County; Robert Teuton, Judge.

The district court denied appellant Rocio Munoz Pino's request to appoint her as the legal guardian of her nephew, D.S.M., and to make special findings that would allow D.S.M. to file a petition with the United States Citizenship and Immigration Services for special immigrant juvenile (SIJ) status. See 8 U.S.C. § 1101(a)(27)(J) (2012); 8 C.F.R. § 204.11 (2009). Appellant contends that the district court erroneously determined that D.S.M. could not show that reunification with one or both of his parents was not viable due to abuse, neglect, abandonment, or similar grounds under state law, as required for SIJ eligibility.

Under federal law, an undocumented juvenile in the United States who is under the age of 21 and unmarried and who meets certain requirements is eligible for SIJ status, a classification which provides a path

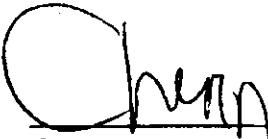
for the juvenile to obtain lawful permanent residency. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c). Before petitioning for SIJ status, a juvenile must obtain an order from a state court finding that the juvenile is dependent on a juvenile court or has been placed under the custody of an individual appointed by the court; that the juvenile's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or similar grounds under state law; and that it is not in the juvenile's best interest to be returned to his or her country of origin. *See* 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c); *see also Matter of Marcelina M.-G. v. Israel S.*, 112 A.D.3d 100, 108-09 (N.Y. App. Div. 2013).

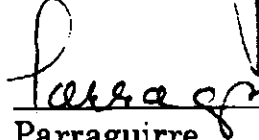
Appellant requested findings from the district court that D.S.M. had been abandoned or neglected by his father by virtue of his father's murder in Mexico, and that it would be in his best interest to remain with appellant rather than be returned to Mexico, his country of origin.¹ The district court found that the murder of D.S.M.'s father did not constitute abandonment or neglect because there was no intent on the father's part to forgo any relationship with D.S.M. We conclude that this finding was not erroneous as, under Nevada law, the definitions of abandonment and neglect contemplate a willful act on the part of the parent. *See* NRS 128.012 (defining "abandonment of a child"); NRS 432B.020 (defining "neglect"); *see also* A.B. 142, 79th Leg. (Nev. 2017) (providing that the definitions of "abandonment" and "neglect" in NRS 128.012 and NRS 432B.020 are to be used for SIJ purposes). Because D.S.M. did not demonstrate that he suffered neglect or abandonment by his father, he did not satisfy the


¹D.S.M. did not allege that reunification with his mother is not viable and does not challenge the district court's factual finding that reunification with his mother is viable.

"reunification" requirement for SIJ status. Thus, the district court did not err in denying the request for special findings, and we

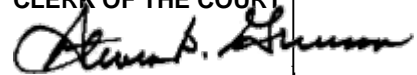
ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Parraguirre


_____, J.
Stiglich

cc: Hon. Robert Teuton, District Judge, Family Court Division
Hamilton Law
Eighth District Court Clerk



**DISTRICT COURT
CLARK COUNTY, NEVADA**

Yesennia Esmeralda Amaya, Plaintiff.
vs.
Milton Orlando Guerrero Rivera,
Defendant.

Case No.: D-17-562584-C
Department N

NOTICE OF ENTRY OF DECISION AND ORDER

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that the Court prepared a Decision and Order and that a file stamped copy is attached hereto.

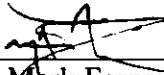
☒ I hereby certify that I electronically served, faxed, emailed, or placed in the appropriate attorney folder located in the Clerk of the Court's Office, a copy of the Decision and Order to:

Alissa A Cooley, Esq.

☒ I hereby certify that I mailed the Decision and Order via first-class mail with postage fully prepaid to:

Milton Orlando Guerrero Rivera
Caserio La Garra
Estanzuelas, Usulután, El Salvador CP 3408

DATED: 3rd day of April, 2018

By: 
Mark Fernandez
Judicial Executive Assistant
Department N

☐ Other
☐ Dismissed - With or Without
☐ Involuntary (Sanction/Dismissal)
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial
☐ Judgment Reached by Trial
☐ Trial Dispositions
☐ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By ADR

1 **Eighth Judicial District Court**

2 **Family Division**

3 **Clark County, Nevada**

4 YESENNIA ESMERALDA AMAYA,)

5 Plaintiff,)

6 vs.)

7 MILTON ORLANDO GUERRERO RIVERA,)

8 Defendant.)

Case: D-17-562584-D

Dept: N

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10 **DECISION AND ORDER**

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14 anytime without an oral hearing. Further, Plaintiff originally did not ask for a hearing as she
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16 5.502(i)). This Court subsequently did set a hearing for a prove-up on this matter. However, a
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23 (b) The reunification of the child ***with one or both of his or her parents*** was determined
24 not to be viable because of *abandonment, abuse or neglect or a similar basis* under the
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27 There was also a change to NRAP 36(c)(3), whereby an unpublished opinion can be used for its
28 *persuasive value*. As the SIJS issue at hand is being handled differently in various states, this
Court believes *any persuasive value* in Nevada is of use. Therefore, the unpublished case is:

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
☐ Judgment Reached by Trial

Non-Trial Dispositions:
☐ Settled/Withdrawn
☐ Without Judicial Conf/Hlg
☐ With Judicial Conf/Hlg
☐ By ADR

Trial Dispositions:
☐ Judgment Reached by Trial

1 IN THE MATTER OF THE GUARDIANSHIP OF THE PERSONS OF, D.S.M., A MINOR.
2 ROCIO MUNOZ PINO, Appellant., No. 72820, 2018 WL 1447726 (Nev. Mar. 15, 2018)
3 (*hereinafter* "D.S.M."). Pursuant to NRAP 36(c)(3), it is attached hereto as Exhibit 1.

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18 DATED this 3rd day of April, 2018.



19
20
21 District Court Judge
Mathew Harter *ms*

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSONS
OF, D.S.M., A MINOR.

ROCIO MUNOZ PINO,
Appellant.

No. 72820

FILED

MAR 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order entered in a guardianship proceeding. Eighth Judicial District Court, Family Court Division, Clark County; Robert Teuton, Judge.

The district court denied appellant Rocio Munoz Pino's request to appoint her as the legal guardian of her nephew, D.S.M., and to make special findings that would allow D.S.M. to file a petition with the United States Citizenship and Immigration Services for special immigrant juvenile (SIJ) status. See 8 U.S.C. § 1101(a)(27)(J) (2012); 8 C.F.R. § 204.11 (2009). Appellant contends that the district court erroneously determined that D.S.M. could not show that reunification with one or both of his parents was not viable due to abuse, neglect, abandonment, or similar grounds under state law, as required for SIJ eligibility.

Under federal law, an undocumented juvenile in the United States who is under the age of 21 and unmarried and who meets certain requirements is eligible for SIJ status, a classification which provides a path

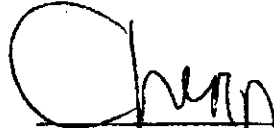
for the juvenile to obtain lawful permanent residency. 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c). Before petitioning for SIJ status, a juvenile must obtain an order from a state court finding that the juvenile is dependent on a juvenile court or has been placed under the custody of an individual appointed by the court; that the juvenile's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or similar grounds under state law; and that it is not in the juvenile's best interest to be returned to his or her country of origin. See 8 U.S.C. § 1101(a)(27)(J); 8 C.F.R. § 204.11(c); see also *Matter of Marcelina M.-G. v. Israel S.*, 112 A.D.3d 100, 108-09 (N.Y. App. Div. 2013).

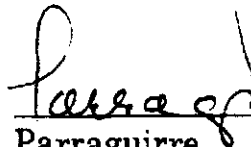
Appellant requested findings from the district court that D.S.M. had been abandoned or neglected by his father by virtue of his father's murder in Mexico, and that it would be in his best interest to remain with appellant rather than be returned to Mexico, his country of origin.¹ The district court found that the murder of D.S.M.'s father did not constitute abandonment or neglect because there was no intent on the father's part to forgo any relationship with D.S.M. We conclude that this finding was not erroneous as, under Nevada law, the definitions of abandonment and neglect contemplate a willful act on the part of the parent. See NRS 128.012 (defining "abandonment of a child"); NRS 432B.020 (defining "neglect"); see also A.B. 142, 79th Leg. (Nev. 2017) (providing that the definitions of "abandonment" and "neglect" in NRS 128.012 and NRS 432B.020 are to be used for SIJ purposes). Because D.S.M. did not demonstrate that he suffered neglect or abandonment by his father, he did not satisfy the

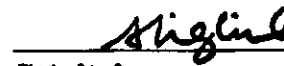
¹D.S.M. did not allege that reunification with his mother is not viable and does not challenge the district court's factual finding that reunification with his mother is viable.

"reunification" requirement for SIJ status. Thus, the district court did not err in denying the request for special findings, and we

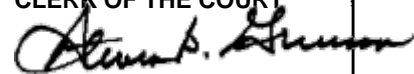
ORDER the judgment of the district court AFFIRMED.


_____, J.
Cherry


_____, J.
Parraguirre


_____, J.
Stiglich

cc: Hon. Robert Teuton, District Judge, Family Court Division
Hamilton Law
Eighth District Court Clerk



Eighth Judicial District Court

Clark County, Nevada

Family Division

YESENNIA ESMERALDA AMAYA,

Plaintiff,

vs.

MILTON ORLANDO GUERRERO RIVERA,

Defendant.

Case: D-17-562584-D

Dept: N

DECISION AND ORDER ON MOTION FOR RECONSIDERATION

Plaintiff filed a Motion for Reconsideration on 04/12/2018 of this Court's Decision and Order entered on 04/03/2018. EDCR 5.512(b) states: "If a motion for reconsideration and/or rehearing is granted, the court may make a final disposition *without hearing*." Further, Plaintiff again put this matter on this Court's Chamber Calendar (requesting no hearing) pursuant to EDCR 5.502(i).

"Only in very rare instances in which *new issues of fact or law* are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted."¹ "A district court *may* reconsider a previously decided issue if *substantially different evidence* is subsequently introduced *or* the decision is *clearly erroneous*."² None of the foregoing basis are subjective, they all have grounds with strict legal parameters. *Substantially different evidence* requires "*some good reason that precluded the moving party from advancing his contentions at an earlier, timely stage of the case.*"³ "A finding is *clearly erroneous* when although there is evidence to support it, the reviewing court *on the entire evidence is left with the definite and*

¹ *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244 (1976).

² *Masonry and Tile Contractors v. Jolley, Urga & Wirth*, 113 Nev 737, 741, 941 P.2d 486 (1997).

³ *Little Earth of the United Tribes, Inc. v. U.S. Dep't of Hous. & Urban Dev.*, 807 F.2d 1433, 1441 (8th Cir. 1986) (cited in *Masonry and Tile Contractors, supra*); compare NRCP 60(b)(2) ("newly discovered evidence which by due diligence could not have been discovered").

1 *firm conviction that a mistake has been committed.”*⁴

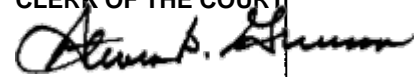
2 This Court *never* takes Motions for Reconsideration lightly nor is offended whatsoever
3 when a party or attorney makes such a request. This Court noted in the underlying Decision and
4 Order at issue that “this Court is fully aware that in *some* jurisdictions around the country, that
5 the reunification factor applies to both parents.” This Court reiterates its knowledge that this is a
6 highly litigious issue in our country at this time. This Court is *not* unsympathetic to the minor
7 child’s plight. However, “a judge must interpret and apply the law without regard to whether the
8 judge approves or disapproves of the law in question.” NCJC 2.2, *Comment* [2]. This Court set
9 forth its legal basis and reasoning in a clear and concise manner and simply cannot find that it has
10 committed *clear error* in the Decision and Order entered on 04/03/2018.

11 Accordingly, the Motion for Reconsideration is DENIED.

12 DATED this 26th day of April, 2018.

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16 District Court Judge
17 Mathew Harter
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27 ⁴ *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746 (1948);
28 *See also Russell v. Thompson*, 96 Nev. 830, 834, 619 P.2d 537, 539 (1980) (“It is only instances such
as the following that permit the court to disregard the report: the findings are based upon material errors
in the proceedings or a mistake in law; or are unsupported by any substantial evidence; or are against
the clear weight of the evidence.”).



**DISTRICT COURT
CLARK COUNTY, NEVADA**

Yesennia Esmeralda Amaya, Plaintiff.
vs.
Milton Orlando Guerrero Rivera,
Defendant.

Case No.: D-17-562584-C
Department N

NOTICE OF ENTRY OF DECISION AND ORDER

TO: ALL PARTIES AND/OR THEIR ATTORNEYS

Please take notice that the Court prepared a Decision and Order and that a file stamped copy is attached hereto.


☒ I hereby certify that I electronically served, faxed, emailed, or placed in the appropriate attorney folder located in the Clerk of the Court's Office, a copy of the Decision and Order to:

Alissa A Cooley, Esq.

☒ I hereby certify that I mailed the Decision and Order via first-class mail with postage fully prepaid to:

Milton Orlando Guerrero Rivera
Caserio La Garra
Estanzuelas, Usulután, El Salvador CP 3408

DATED: 26th day of April, 2018

By: 
Mark Fernandez
Judicial Executive Assistant
Department N

1 Eighth Judicial District Court

2 Clark County, Nevada

3 Family Division

4 YESENNIA ESMERALDA AMAYA,)

5 Plaintiff,)

6 vs.)

7 MILTON ORLANDO GUERRERO RIVERA,)

8 Defendant.)

Case: D-17-562584-D

Dept: N

9
10 **DECISION AND ORDER ON MOTION FOR RECONSIDERATION**

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12 Order entered on 04/03/2018. EDCR 5.512(b) states: "If a motion for reconsideration and/or
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1441 (8th Cir. 1986) (cited in *Masonry and Tile Contractors, supra*); compare NRCP 60(b)(2) ("newly
discovered evidence which by due diligence could not have been discovered").

Non-Trial Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Transferred
☐ Default Judgment
☐ Disposed After Trial Start

Trial Dispositions:
☐ Settled/Withdrawn
☒ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ Pw ADR
☐ Judgment Reached by Trial

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as the following that permit the court to disregard the report: the findings are based upon material errors
in the proceedings or a mistake in law; or are unsupported by any substantial evidence; or are against
the clear weight of the evidence.”).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

March 30, 2018

D-17-562584-C Yesennia Esmeralda Amaya, Plaintiff.
vs.
Milton Orlando Guerrero Rivera, Defendant.

March 30, 2018 11:00 AM Minute Order

HEARD BY: Harter, Mathew

COURTROOM: Courtroom 24

COURT CLERK:

PARTIES:

Andrea Guerrero Amaya, Subject Minor, not present

Milton Guerrero Rivera, Defendant, not present

Yesennia Amaya, Plaintiff, not present

JOURNAL ENTRIES

- MINUTE ORDER: NO HEARING HELD AND NO APPEARANCES

NRCP 1 and EDCR 1.10 state that the procedure in district courts shall be administered to secure efficient, speedy, and inexpensive determinations in every action. Pursuant to EDCR 2.23(c) and NRCP 78, this Court can consider a motion and issue a decision on the papers at anytime without an oral hearing.

Plaintiff filed her *Motion for Findings on the Issue of Immigrant Juvenile Status* (“Motion”) on February 28, 2018. A hearing is currently set for April 4, 2018. This Court discovered persuasive case law that has recently been made from the Nevada Supreme Court and must take this into consideration.

IT IS HEREBY ORDERED that the hearing date of April 4, 2018 is VACATED.

IT IS FURTHER ORDERED that this Court will issue a decision regarding Plaintiff's Motion by April 16, 2018.

A copy of this minute order shall be provided to both parties.

PRINT DATE:	03/30/2018	Page 1 of 1	Minutes Date:	March 30, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

ALISSA A. COOLEY, ESQ.
526 S. 7TH ST.
LAS VEGAS, NV 89101

DATE: May 1, 2018
CASE: D-17-562584-C

RE CASE: YESENIA ESMERALDA AMAYA vs. MILTON ORLANDO GUERRERO RIVERA

NOTICE OF APPEAL FILED: April 27, 2018

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT TRANSMITTED HAVE BEEN MARKED:**

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION AND ORDER; NOTICE OF ENTRY OF DECISION AND ORDER; DECISION AND ORDER ON MOTION FOR RECONSIDERATION; NOTICE OF ENTRY OF DECISION AND ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

YESENIA ESMERALDA AMAYA,

Plaintiff(s),

vs.

MILTON ORLANDO GUERRERO RIVERA,

Defendant(s),

Case No: D-17-562584-C

Dept No: N

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 1 day of May 2018.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk