

NOAS

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Attorney for Plaintiff, Ignacio Avila, Jr.

**DISTRICT COURT,
FAMILY DIVISION
CLARK COUNTY, NEVADA**

IGNACIO AVILA, JR.

Plaintiff,

vs.

ROSIE ELENA MARTINEZ,

Defendant.

CASE NO: D-15-515892-C

DEPT. NO: L

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the Plaintiff, IGNACIO AVILA, JR., by and through his attorney of record, AREZOU H. PIROOZI, ESQ., of PIROOZI LAW GROUP,

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1 PLLC., hereby appeals to the Supreme Court of the State of Nevada the Notice of Entry
2 of Order filed on September 25, 2018, denying Plaintiff's Motion to Reconsider the Order
3 Entered June 20, 2018; And Judgement for An Award of Attorney's Fees entered on
4 September 25, 2018. Said motion was a tolling motion pursuant to *AA PRIMO*
5 *BUILDERS, LLC v. Washington*, 126 Nev. Adv. Op. 53, 245 P. 3d 1190 (2010).
6

7 **DATED** this 17th day of October, 2018. Respectfully Submitted by:
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10 

11 **AREZOU H. PIROOZI, ESQ.**

12 NEVADA BAR# 10187

13 **PIROOZI LAW GROUP, PLLC.**

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18 EMAIL: apiroozi@piroozilawgroup.com

19 Attorney for Plaintiff, Ignacio Avila, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of **PIROOZI LAW GROUP, PLLC** ("the Firm"). I am over the age of eighteen (18) and not a party to the within action. I am readily familiar with the Firm's practice of collection and processing correspondence for mailing. Under the Firm's practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing document as described as "**NOTICE OF APPEAL**" on this 18th day of October, 2018, to all interested parties as follows:

☒ **BY MAIL:** Pursuant to NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows:

☒ **BY ELECTRONIC FILING:** via Court's electronic filling and service systems ("Wiznet") to all parties on the current service list.

☐ **BY FACSIMILE:** Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;

STEVEN L. YARMY, ESQ.

7454 West Sahara Avenue

Las Vegas, Nevada 89117

Attorney for Third Party Defendant, Henry Oliva.

ROSIE MARTINEZ

5005 Losee Road, Apt 3019

North Las Vegas, Nevada 89081

Defendant.

HENRY OLIVA

5729 Awakening Street

North Las Vegas, Nevada 89081

Third Party Defendant, Henry Oliva.



An employee of Piroozi Law Group, PLLC.

CASE SUMMARY**CASE NO. D-15-515892-C**

Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

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Location: **Department L**
 Judicial Officer: **Elliott, Jennifer**
 Filed on: **06/03/2015**

CASE INFORMATION**Statistical Closures**

09/21/2018 Settled/Withdrawn With Judicial Conference or Hearing
 03/29/2018 Settled/Withdrawn With Judicial Conference or Hearing
 07/22/2016 Settled/Withdrawn With Judicial Conference or Hearing
 06/29/2016 Settled/Withdrawn With Judicial Conference or Hearing

Case Type: **Child Custody Complaint**Case Status: **10/19/2018 Reopened**Case Flags: **Order After Hearing Required
Appealed to Supreme Court****DATE****CASE ASSIGNMENT****Current Case Assignment**

Case Number D-15-515892-C
 Court Department L
 Date Assigned 06/03/2015
 Judicial Officer Elliott, Jennifer

PARTY INFORMATION**Plaintiff**

Avila, Ignacio, Jr.
*1214 Emerald Stone AVE
 North Las Vegas, NV 89081*

Piroozi, Arezou H.
*Retained
 702-260-1010(W)
Ghandi, Nedda
*Retained
 702-878-1115(W)**

Avila, Ignacio, Jr.
 Removed: 08/13/2018
 Data Entry Error

Avila, Ignacio, Jr.
 Removed: 09/05/2018
 Data Entry Error

Piroozi, Arezou H.
*Retained
 702-260-1010(W)*

Defendant

Martinez, Rosie
*5729 Awakening ST
 North Las Vegas, NV 89081*

Pro Se
 702-353-9271(H)

Subject Minor

Martinez-Olivia, Jazlynn Rose

DATE**EVENTS & ORDERS OF THE COURT****EVENTS**

10/18/2018



Notice of Appeal
 Filed by: Plaintiff Avila, Ignacio, Jr.
Notice of Appeal

09/25/2018



Notice of Entry of Order/Judgment
 Filed by: Third Party Defendant Oliva, Henry
*Notice Of Entry Of Order On Plaintiff's Motion For Reconsideration; And Judgement For An
 Award Of Attorney's Fees*

09/21/2018



Order
 Filed by: Third Party Defendant Oliva, Henry

CASE SUMMARY

CASE NO. D-15-515892-C

Order On Plaintiff's Motion For Reconsideration; And Judgement For An Award Of Attorney's Fees

09/05/2018



Notice of Non Opposition

Filed by: Plaintiff Avila, Ignacio, Jr.

Notice of Non-Opposition to Plaintiff's Motion to Reconsider the Order Entered June 20, 2018.

08/30/2018



Affidavit of Service

Filed by: Counter Defendant Avila, Ignacio, Jr.

AFFIDAVIT OF SERVICE

08/15/2018



Certificate of Service

Filed by: Third Party Defendant Oliva, Henry

Certificate Of Service

08/14/2018



Opposition and Countermotion

Filed by: Third Party Defendant Oliva, Henry

Counter-Defendant Henry Oliva's Opposition To Motion To Reconsider The Order Entered June 20, 2018; And Opposition To Plaintiff's Motion Fr Attorney's Fees And costs, And Counter-Defendant's Motion For Attorney's Fees And Costs

08/03/2018



Affidavit of Service

Filed by: Plaintiff Avila, Ignacio, Jr.

Affidavit of Service

07/06/2018



Motion

Filed by: Counter Defendant Avila, Ignacio, Jr.

Motion To Reconsider The Order Entered June 20, 2018

06/20/2018



Notice of Entry of Order

Filed by: Counter Defendant Avila, Ignacio, Jr.

Notice of Entry of Order

06/15/2018



Order

Filed by: Counter Defendant Avila, Ignacio, Jr.

Order

05/09/2018



Notice of Withdrawal

Filed by: Third Party Defendant Oliva, Henry

04/27/2018



Notice of Withdrawal

Filed By: Counter Claimant Martinez, Rosie

Notice of Withdrawal of Attorney

03/02/2018



Notice of Change of Address

Filed by: Third Party Defendant Oliva, Henry

Notice of Change of Address

02/01/2018



Notice of Withdrawal

Filed by: Counter Claimant Martinez, Rosie

Notice of Withdrawal of Attorney

01/25/2018



Order for Family Mediation Center Services

Order for Family Mediation Center Services

01/22/2018



Notice

Filed by: Counter Defendant Avila, Ignacio, Jr.

Notice Of Affidavit Of Attempts For Henry Oliva

01/22/2018



















Notice

Filed by: Counter Defendant Avila, Ignacio, Jr.

Notice of non-opposition to plaintiff's verified motion to amend the complaint for custody, to establish joint legal and joint physical custody, to set aside the custody decree, to modify custody, for child support, and for attorney's fees and costs.

CASE SUMMARY

CASE NO. D-15-515892-C

01/19/2018	 Financial Disclosure Form <i>Financial Disclosure Form</i>
12/18/2017	 Affidavit of Service Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Affidavit Of Service</i>
11/02/2017	 Motion Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Pltf's Motion to Join Henry Oliva as a Defendant, For The Limited Purpose of Determining Paternity of the Minor Child, Alan Oliva.</i>
11/01/2017	 Motion Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Pltf's Motion to Join Henry Oliva as a Deft, for the Limited Purpose of Determining Paternity of the Minor Child, Alan Oliva.</i>
11/01/2017	 Motion Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Verified Motion to Amend the Complaint for Custody, To Establish Joint Legal and Joint Physical Custody, To Set Aside the Custody Decree, To Modify Custody, For Child Support, And for Attorney s Fees And Costs.</i>
11/01/2017	 Exhibits Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Plaintiff's Exhibit Appendix</i>
11/01/2017	 Amended Filed By: Counter Defendant Avila, Ignacio, Jr. <i>First Amended Complaint For Custody</i>
03/14/2017	 Notice of Entry Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of First Amended Decree of Custody</i>
03/01/2017	 Custody Decree / Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>First Amended Decree of Custody</i>
02/13/2017	 Notice of Entry of Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Order Amending Stipulated Decree of Custody Filed July 22, 2016.</i>
02/08/2017	 Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Order Amending Stipulated Decree of Custody Filed July 22, 2016</i>
01/26/2017	 Ex Parte Application Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Ex Parte Application to Amend Stipulated Decree of Custody</i>
07/28/2016	 Notice of Change of Address Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Change of Address</i>
07/25/2016	 Notice of Entry of Decree Party: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Stipulated Decree of Custody</i>
07/22/2016	 Custody Decree / Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Stipulated Decree of Custody</i>
07/12/2016	 Notice of Entry of Order

CASE SUMMARY

CASE NO. D-15-515892-C

	Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Order from February 23, 2016 Hearing</i>
06/28/2016	 Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Order from February 23, 2016 Hearing</i>
04/29/2016	 Notice of Attorney Lien Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Claim of Attorney's Lien</i>
02/29/2016	 Notice of Entry of Order Filed by: Counter Claimant Martinez, Rosie <i>Notice of Entry of Order to Withdraw</i>
02/25/2016	 Order Granting Filed by: Counter Claimant Martinez, Rosie <i>Order</i>
02/18/2016	 Application Filed by: Counter Claimant Martinez, Rosie <i>Application for Zoom Order on Gayle Nathan's Motion to Withdraw</i>
02/18/2016	 Application Filed by: Counter Claimant Martinez, Rosie <i>Application for Zoom Order on Gayle Nathan's Motion to Withdraw</i>
02/18/2016	 Certificate of Service Filed by: Counter Claimant Martinez, Rosie <i>Amended Certificate of Service on Gayle Nathan's Motion to Withdraw filed Feb 3 2016</i>
02/17/2016	 Pre-trial Memorandum Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Plaintiff's Pre Trial Memorandum</i>
02/09/2016	 Certificate of Service Filed by: Counter Claimant Martinez, Rosie <i>Certificate of Service (Gayle Nathan's Motion to Withdraw)</i>
02/09/2016	 Financial Disclosure Form Filed by: Counter Claimant Martinez, Rosie <i>Defendant's Financial Disclosure Form</i>
02/03/2016	 Motion Filed by: Counter Claimant Martinez, Rosie <i>Gayle Nathan's Motion to Withdraw as Counsel for Defendant Rosie Martinez</i>
01/08/2016	 Receipt of Copy Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Receipt of Copy</i>
12/22/2015	 Notice of Entry of Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Order from November 6, 2015 Hearing</i>
12/04/2015	 Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Order from November 5, 2015 Hearing</i>
11/12/2015	 Trial Management Order Party: Counter Defendant Avila, Ignacio, Jr. <i>Settlement Conference and/or Evidentiary Hearing and/or Trial Management Order</i>
11/05/2015	 Order for Family Mediation Center Services <i>Order for Family Mediation Center Services</i>

CASE SUMMARY

CASE NO. D-15-515892-C

10/21/2015	 Notice of Entry Filed by: Counter Claimant Martinez, Rosie <i>Notice of Entry on Order Shortening Time on Motion to Withdraw and Order</i>
10/14/2015	 Ex Parte Application for Order Party: Counter Claimant Martinez, Rosie <i>Ex Parte Motion for Order Shortening Time On Motion to Withdraw</i>
10/12/2015	 Motion Filed by: Counter Claimant Martinez, Rosie For: Counter Defendant Avila, Ignacio, Jr. <i>Deft's Attorney Motion to Withdraw as Counsel</i>
09/01/2015	 Order for Family Mediation Center Services
09/01/2015	 Stipulation and Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Stipulation and Order to Continue Case Management Conference, Plaintiff's Motion and Defendant's Countermotion</i>
08/25/2015	 Notice of Entry of Stipulation and Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Stipulation and Order for Paternity Testing</i>
08/17/2015	 Financial Disclosure Form Filed by: Counter Defendant Avila, Ignacio, Jr. <i>General Financial Disclosure Form</i>
08/14/2015	 Substitution of Attorney Filed by: Counter Claimant Martinez, Rosie <i>Substitution of Attorney</i>
08/12/2015	 Reply to Opposition Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, child support Pursuant to Wright v. Osburn, to change Minor child's Name, and for attorney's Fees and Costs and Opposition to Defendant's Countermotion for Paternity Testing, Mediation, for primary Physical Custody and Defined Visitation, and for an Order for Child Support, Attorney's Fees and Other Related Relief</i>
08/12/2015	 Certificate of Mailing Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Certificate of Mailing</i>
08/07/2015	 Stipulation and Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Stipulation and Order for Paternity Testing</i>
07/31/2015	 Reply to Counterclaim Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Reply to Counterclaim</i>
07/27/2015	 NRCP 16.2 Case Management Conference Filed by: Counter Defendant Avila, Ignacio, Jr. <i>NRCP 16.2 Case Management Conference</i>
07/23/2015	 Answer and Counterclaim - Divorce, Annulment, Separate Maint Filed by: Counter Claimant Martinez, Rosie <i>Answer to Complaint for Custody and Counterclaim</i>
07/23/2015	 Opposition and Countermotion Filed by: Counter Claimant Martinez, Rosie <i>Opposition to Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, Child Support Pursuant to Wright v. Osburn, to Change the Minor Child's Name and for Attorney's</i>

CASE SUMMARY

CASE NO. D-15-515892-C

Fees and Costs and Countermotion for an Order for Paternity Testing; for Mediation; for Primary Physical Custody and a Defined Visitation and for an Order for Child Support, Attorney's Fees and Other Related Relief

07/13/2015



Certificate of Mailing

Filed by: Counter Defendant Avila, Ignacio, Jr.

Certificate of Mailing

07/10/2015



Motion

Filed by: Counter Defendant Avila, Ignacio, Jr.

Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, Child Support Pursuant to Wright v. Osburn, to change Minor child's Name, and for Attorney's Fees and Costs

07/10/2015



Notice

Filed by: Counter Claimant Martinez, Rosie

Notice of Counsel

07/06/2015



Affidavit of Service

Filed by: Counter Defendant Avila, Ignacio, Jr.

Affidavit of Service

06/08/2015



Joint Preliminary Injunction

Filed by: Counter Defendant Avila, Ignacio, Jr.

Joint Preliminary Injunction

06/08/2015



Summons Issued Only

Filed by: Counter Defendant Avila, Ignacio, Jr.

Summons

06/03/2015



Complaint for Custody

Filed by: Counter Defendant Avila, Ignacio, Jr.

Complaint for Custody, Visitation and Child Support

DISPOSITIONS

09/21/2018

Judgment (Judicial Officer: Elliott, Jennifer)

Judgment (\$1,000.00, In Full , Attorneys Fees)

HEARINGS

09/11/2018



All Pending Motions (10:00 AM) (Judicial Officer: Hardcastle, Gerald W.)

MINUTES

Matter Heard;

Journal Entry Details:

PLAINTIFF'S MOTION TO RECONSIDER THE ORDER ENTERED June 20, 2018...COUNTER-DEFENDANT HENRY OLIVA'S OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER THE ORDER ENTERED June 20, 2018; AND OPPOSITION TO PLAINTIFF'S TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS AND COUNTER-DEFENDANT'S MOTION FOR ATTORNEY'S FEES AND COSTS Steven Yarmy, Bar #8733, present on behalf of Henry Oliva, putative father. Court noted it reviewed the motion and the underlying decision, and the COURT FINDS that Judge Elliott carefully considered the facts and applied the law in issuing her decision, and this Court is not going to interfere with that decision. Based on the foregoing, COURT ORDERED, Plaintiff's Motion to Reconsider the Order entered June 20, 2018 is DENIED. ATTORNEY'S FEES are awarded in favor of Defendant against Plaintiff in the amount of \$1,000.00. This amount is REDUCED TO JUDGMENT, collectible by all lawful means. Mr. Yarmy shall prepare the Order from today's hearing; Ms. Piroozi shall review and sign off.;

Matter Heard

09/11/2018

Opposition & Countermotion (10:00 AM) (Judicial Officer: Hardcastle, Gerald W.)

Events: 08/14/2018 Opposition and Countermotion

Counter Deft Henry Oliva's Opposition to Motion to Reconsider the Order Entered June 20, 2018; and Opposition to Pltf Motion for Atty's Fees and Costs and Counter-Deft's Motion for Atty's Fees and Costs

Granted;

CASE SUMMARY

CASE NO. D-15-515892-C

Granted

09/11/2018

Motion (10:00 AM) (Judicial Officer: Hardcastle, Gerald W.)

Events: 07/06/2018 Motion

Pltfs-Motion To Reconsider The Order Entered June 20, 2018

Denied;

Denied

03/29/2018

CANCELED Return Hearing (9:30 AM) (Judicial Officer: Elliott, Jennifer)

Vacated - per Clerk

FMC (Mediation)

03/29/2018



Minute Order (7:30 AM) (Judicial Officer: Elliott, Jennifer)

MINUTES

Minute Order - No Hearing Held;

Journal Entry Details:

The Court in review of its March 29, 2018 calendar notes the following: 1. This case was initiated by Plaintiff's complaint for custody of Jazlynn Rose Martinez (DOB 10/25/13). 2. Plaintiff admitted that through his own "self-help" DNA test, he found out on January 20, 2017, that Defendant's child Alan (DOB 10/18/11) was also his biological son. 3. Thereafter, the First Amended Decree of Custody, drafted by Plaintiff's counsel, was filed March 1, 2017 wherein only the minor child Jazlyn was included as a child born to Plaintiff and Defendant. 4. Plaintiff filed an Amended Complaint for Custody November 1, 2017 which included the minor child Alan (DOB 10/18/11). 5. At the January 25, 2018 hearing, Plaintiff was represented by Arezou Piroozi, Esq., Defendant was represented by Soraya Veiga, Esq. (unbundled) and Henry Oliva was represented by Steven Yarmy, Esq. (unbundled). 6. The Court Ordered that Henry Oliva be added as a third party Defendant in this case. 7. After listening to argument at the January 25, 2018 hearing, the Court summarized the relevant paternity law into the record as reiterated below. 8. The Court Found and Ordered that the child was over six (6) years of age, that Henry Oliva was the named father on the birth certificate, that the child had been living with Defendant Rosie Martinez and Henry Oliva since his birth, that Plaintiff's "self-help" positive DNA test was provided to Plaintiff PRIOR to his attorney having drafted the First Amended Decree of Custody filed March 1, 2017 wherein only the minor child Jazlyn was included as a child born to Plaintiff and Defendant and that absent clear and convincing evidence of fraud on Defendant's part, or absent a stipulation between the parties, his request for Court-Ordered paternity tests of himself and Henry Oliva were denied. 9. Plaintiff advised that he had taken Alan on visitation many times when he had Jazlynn for visitation. The Court advised that he may have established a meaningful relationship with the child under NRS 125C.050 and the parties could mediate a stipulated schedule if they desired. 10. Plaintiff thereafter advised the Court that Mr. Oliva had recently text of a portion of a positive DNA test without any named father designed to make Plaintiff believe that he was the father of the minor child Alan. The Court made no findings as to this text. 11. The Court sent all three (3) parties to mediation and Ordered that if there was an impasse, Plaintiff's counsel shall file a legal brief if Plaintiff felt he had clear and convincing evidence of fraud that could be imputed to Defendant pursuant to paternity law. 12. The parties were Ordered not to discuss any part of this litigation with or in the presence of the children pursuant to EDCR 5.301. 13. The Court is in receipt of a March 1, 2018 letter from the Family Mediation Center (FMC) stating that the parties reached an impasse. 14. No further briefing has been filed in this case. 15. Plaintiff has not filed a motion for a meaningful relationship with the minor child Alan, which the Court advised he may be able to establish, if it is true that he had visitation with Alan many times when he had his visitation with Jazlyn. 16. Ms. Piroozi failed to file the Order from the January 25, 2018 hearing and thus the Court files this Order. The Court FINDS that pursuant to NRS 440.610, the facts listed in the child's birth certificate become prima facie evidence of the facts stated therein. Thus, a person listed as the father on the birth certificate is presumed to be the father of the child if paternity becomes disputed. NRS 440.610 Certificate as prima facie evidence. Each certificate, as provided for in this chapter, filed within 6 months after the time prescribed for their filing, shall be prima facie evidence of the facts therein stated. Data pertaining to the father of a child is such evidence if the alleged father is, or becomes, the husband of the mother in a legal marriage; if not, the data pertaining to the father of a child is not such evidence in any civil or criminal proceeding adverse to the interests of the alleged father, or of his heirs, devisees or other successors in interest, if the paternity is controverted. The following statutory presumption applies to Paternity findings: N.R.S. 126.051 Presumptions of Paternity 1. A man is presumed to be the natural father of a child if: (d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child. "Under the statutory scheme for determining paternity, the district court is not compelled to determine, on the basis of deoxyribonucleic acid (DNA) test, that a man is or is not a child's father as a matter of law, N.R.S. 126.051, 126.121. Love v. Love, 1998, 959 P.2d 523, 114 Nev.

CASE SUMMARY

CASE NO. D-15-515892-C

572. The statutory scheme for determining paternity clearly reflects the legislature's intent to allow non-biological factors to become critical. *Love v. Love*, 1998, 959 P.2d 523, 114 Nev. 572. "The Legislature has made it clear that although it is now possible to determine biological paternity with certainty, biology is not the predominant consideration in determining parental responsibility once a child has reached his or her third year of life, (*In re Marriage of B.*, *supra*, 124 Cal.App.3d at p. 531, 177 Cal.Rptr. 429.) *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1449, 53 Cal. Rptr. 2d 439, 447 (1996). "The state has an interest in preserving and protecting the developed parent-child and sibling relationships which give young children social and emotional strength and stability. [Citation omitted.] This interest is served notwithstanding termination of the mother's marital relationship with the presumed father. (*Susan H. v. Jack S.*, *supra*, 30 Cal.App.4th at pp. 1442 1443, 37 Cal.Rptr.2d 120.), *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1450, 53 Cal. Rptr. 2d 439, 448 (1996). Biology will only control a determination of paternal responsibility for a limited period early in a child's life and thereafter the predominant consideration must be the nature of the presumed father's social relationship with the child. *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1446, 53 Cal. Rptr. 2d 439, 446 (1996). Under California Statutory Law, In 1980 the Legislature added what is now section 7541 providing for rebuttal of the presumption by blood testing requested within two years following a child's birth, *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1444, 53 Cal. Rptr. 2d 439, 444-45 (1996). After two (2) years absent clear and convincing evidence of fraud or mistake of fact, a request for a paternity test may be denied. "In the case of an older child the familial relationship between the child and the man purporting to be the child's father is considerably more palpable than the biological relationship of actual paternity. A man who has lived with a child, treating it as his son or daughter, has developed a relationship with the child that should not be lightly dissolved and upon which liability for continued responsibility to the child might be predicated. This social relationship is much more important, to the child at least, than a biological relationship of actual paternity, *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1445, 53 Cal. Rptr. 2d 439, 445 (1996). Plaintiff is also barred by claim preclusion, which is a defense that prevents the re-litigation of a previously resolved claim. *Elizondo v. Hood Mach., Inc.*, 129 Nev., Adv. Op. 84, 312 P.3d 479, 483 (2013). Precluding the re-litigation of issues such as paternity and other valid judgments, "protect[s] the finality of decisions and prevent[s] the proliferation of litigation" that could have been brought in the prior action. *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev., Adv. Op. 80, 266 P.3d 602, 605 (2011) (internal quotations omitted). This doctrine can apply to divorce decrees incorporating marital settlement agreements that resolve issues of paternity and child support obligations. *Love v. Love*, 114 Nev. 572, 575, 959 P.2d 523, 526 (1998); *Willerton v. Bassham*, 111 Nev. 10, 14, 889 P.2d 823, 825 (1995). Claim preclusion applies when "(1) the final judgment is valid, ... (2) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case, and (3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, or the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a good reason for not having done so." *Weddell v. Sharp*, 131 Nev., Adv. Op. 28, 350 P.3d 80, 85 (2015). The Court finds in the case at bar that Plaintiff is precluded from raising this claim based on judgments filed December 14, 2015, June 28, 2016, July 22, 2016, February 8, 2017 and March 1, 2017. Although there is a valid policy concern about the unfairness of being obligated to support someone else's child, however, there is a balance between that policy interest and claim preclusion's policy of protecting the finality of judgments as it carves out an exception to claim preclusion for previous judgments that were obtained by extrinsic fraud. (See *Love*, 114 Nev. at 576, 959 P.2d at 526.) (Emphasis added.) Where there is an older child (age 3 or older), absent clear and convincing evidence of fraud, the policy of the law in determining paternity falls on the side of societal interests in protecting children by providing consistency, security, support and maintaining the known family structure. This may include the attachment and bond they have developed as family members which is deemed more compelling than biology when a man has been standing in the role as the child's father, holding the child out as his own, and they have developed an identity as parent and child--as a family. The child in this case is six and a half (6.5) years old; the time to contest paternity has long past. The Court FINDS that paternity cannot be challenged as the child is now six and one half (6.5) years old and Plaintiff has failed to challenge the child's paternity in a timely manner in the instant case. The Court ORDERS that other than joining Henry Oliva as a necessary party, Plaintiff's MOTION SHALL BE DENIED and the case shall be closed. The Court FURTHER ORDERS that parties SHALL NOT DISCUSS this case with the minor children. Children can suffer hurt and loss when a parent determines later in their minority to contest paternity. The parties are hereby put on notice that they are not to discuss this or any other Family Court litigation with the minor child pursuant to EDCR 5.301 below: EDCR 5.301 Confidentiality, best interests of children. Absent a written order of the court to the contrary, all lawyers, litigants, witnesses or other parties privy to matters being heard by the family division are prohibited from: (a) Discussing the issues, proceedings, pleadings, or papers on file with the court with the minor children of the litigants; (b) Allowing any minor

CASE SUMMARY

CASE NO. D-15-515892-C

child to review the record of the proceedings before the court, whether in the form of transcripts, audio cassettes or audio-visual tapes; or (c) Leaving such materials in a place where it is likely or foreseeable that a child will access those materials. The Clerk shall remove the matter from the Court's calendar set March 29, 2018 at 9:30 a.m. pursuant to EDCR 2.23. Department L JEA shall advise parties and counsel there shall be no appearances and this case has been closed. Should a final Order be desired, Ms. Piroozi may draft an Order from this minute order and both Ms. Martinez and Mr. Oliva shall review and sign off or waive signature. ;

Minute Order - No Hearing Held

01/25/2018



All Pending Motions (9:00 AM) (Judicial Officer: Elliott, Jennifer)

MINUTES

Matter Heard;

Journal Entry Details:

PLAINTIFF'S VERIFIED MOTION TO AMEND THE COMPLAINT FOR CUSTODY, TO ESTABLISH JOINT LEGAL AND JOINT PHYSICAL CUSTODY, TO SET ASIDE THE CUSTODY DECREE, TO MODIFY CUSTODY, FOR CHILD SUPPORT, AND FOR ATTORNEY'S FEES AND COSTS...PLAINTIFF'S MOTION TO JOIN HENRY OLIVA AS A DEFENDANT, FOR THE LIMITED PURPOSE OF DETERMINING PATERNITY OF THE MINOR CHILD, ALAN OLIVA Soraya Veiga, Bar #7944, present on behalf of Defendant in an UNBUNDLED capacity. Steven Yarmy, Bar #8733, present on behalf of Henry Oliva in an UNBUNDLED capacity. Plaintiff, Defendant, and Henry Oliva sworn and testified. Argument by Ms. Piroozi, Ms. Veiga, and Mr. Yarmy regarding Plaintiff's Motions and allegations of fraud. Plaintiff alleged Mr. Oliva presented with a false DNA test. Court read relative case law on the record. COURT ORDERED, the Default filed on 1/24/18 shall be STRICKEN from the record. Henry Oliva shall be added as a third party Defendant to this case. Court is not ordering a Paternity Test absent a STIPULATION. Parties REFERRED to Family Mediation Center (FMC) for MEDIATION. A Return Hearing is SET for 3/29/18 at 9:30 AM. Order for Family Mediation Center Services FILED IN OPEN COURT. If parties are unable to reach an agreement, counsel shall file a brief as to whether fraud can be imputed to the Defendant when the fraud was committed by a person outside of the case. Counsel may further request an earlier return date. The parties shall keep each other apprised of any CHANGE in ADDRESS, TELEPHONE NUMBER, and EMPLOYMENT, ten days prior to making the change. In addition, the change in address and telephone number shall be filed with the Clerk's Office. Pursuant to EDCR 5.301, none of the parties shall discuss any part of this litigation with the children or in the presence of the children. Ms. Piroozi shall prepare the Order from today's hearing; Ms. Veiga and Mr. Yarmy shall have 7 judicial days to review and sign off.;

Matter Heard

01/25/2018

Motion (9:00 AM) (Judicial Officer: Elliott, Jennifer)

Events: 11/02/2017 Motion

Plt's Motion to Join Henry Oliva as a Defendant, For The Limited Purpose of Determining Paternity of the Minor Child, Alan Oliva.

Referred to Family Mediation;

Referred to Family Mediation

01/25/2018

Motion (9:00 AM) (Judicial Officer: Elliott, Jennifer)

Events: 11/01/2017 Motion

Plt's Verified Motion to Amend the Complaint for Custody, To Establish Joint Legal and Joint Physical Custody, To Set Aside the Custody Decree, To Modify Custody, For Child Support, And for Attorney's Fees And Costs.

Referred to Family Mediation;

Referred to Family Mediation

11/29/2017

CANCELED Motion (0:00 AM) (Judicial Officer: Elliott, Jennifer)

Vacated - per Law Clerk

Plt's Motion to Join Henry Oliva as a Def, for the Limited Purpose of Determining Paternity of the Minor Child, Alan Oliva.

03/08/2016

CANCELED Evidentiary Hearing (1:30 PM) (Judicial Officer: Elliott, Jennifer)

Vacated - per Judge

Custody (Stack #1)

03/08/2016

CANCELED Motion for Withdrawal (10:00 AM) (Judicial Officer: Elliott, Jennifer)


Vacated - per Clerk

Motion to Withdraw as Counsel for Defendant Rosie Martinez

CASE SUMMARY

CASE NO. D-15-515892-C

02/23/2016

 **Calendar Call** (11:00 AM) (Judicial Officer: Elliott, Jennifer)

MINUTES

06/28/2016

 **Order**

Filed by: Counter Defendant Avila, Ignacio, Jr.

Order from February 23, 2016 Hearing


Matter Heard;

Journal Entry Details:

CALENDAR CALL The Court noted Attorney Nathan's filed a Motion to Withdraw as Attorney of Record for Defendant due to lack of cooperation. The Court further noted Ms. Nathan's Motion was granted. The Court inquired as to a settlement being reached. Upon inquiry Attorney Ghandi advised the court parties were able to reach an agreement. Parties sworn and testified. The Canvassed Plaintiff and Defendant as to the terms of the agreement. THE COURT ORDERED, Parties AGREED to keep the SCHEDULE with TEMPORARY ORDERS currently in place becoming PERMANENT ORDERS. Parties shall have JOINT LEGAL CUSTODY of the minor child. Defendant shall have PRIMARY PHYSICAL CUSTODY of the minor child. Plaintiff shall pay Defendant CHILD SUPPORT in the amount of \$400.00 per month, plus an ADDITIONAL \$50.00 per month towards CHILD SUPPORT ARREARS for a total monthly SUPPORT OBLIGATION of \$450.00 per month, until CHILD SUPPORT ARREARS are PAID IN FULL. Attorney Ghandi shall work with parties as to the ESTABLISHMENT of CHILD SUPPORT ARREARS, so that there is a date as to when Plaintiff's CHILD SUPPORT ARREARS are PAID IN FULL. The minor child's name shall be changed to JAZLYNN ROSE MARTINEZ AVILA. The minor child's BIRTH CERTIFICATE shall be AMENDED to reflect the child's name change. Defendant shall have (30) days to provide all UNCOVERED MEDICAL COSTS to Opposing Counsel. UNCOVERED MEDICAL BILLS submitted to Opposing Counsel shall be from the date of the child's birth (10-2013) through today date (2-23-2016), and include BIRTHING COSTS. Both parties shall provide MEDICAL INSURANCE COVERAGE for the minor child. Neither party shall receive an OFF-SET as to MEDICAL INSURANCE COVERAGE. Parties shall utilize Department L's Default Holiday Plan. Attorney Ghandi shall attach the Default Holiday Plan to the final Decree of Custody Order. Attorney Gayle Nathan's MOTION to WITHDRAW as ATTORNEY of RECORD shall be GRANTED. Hearing SET for 3-8-2016 shall be VACATED. Non-Jury Trial SET for 3-8-2016 shall be VACATED. Attorney Ghandi shall prepare the order of the court. Defendant shall have (7) days to review and sign off. ;

Matter Heard

01/19/2016

 **Return Hearing** (9:30 AM) (Judicial Officer: Elliott, Jennifer)

Events: 11/05/2015 Order for Family Mediation Center Services

FMC (Mediation)

MINUTES

 **Order for Family Mediation Center Services**

Order for Family Mediation Center Services


Matter Heard;

Journal Entry Details:

RETURN HEARING: FMC (MEDIATION) Upon the matter being called the court noted the agreement reached by parties. Opening remarks by Attorney Nathan who advised the court Defendant/Mom was at home with the children whom are sick. The Court noted the correction as to the minutes from the hearing held on 11-5-2015. THE COURT further noted concerns as to a settlement being reached and parties attending UNLV Mediation. THE COURT ORDERED, 1. Defendant/Mom shall file a FINANCIAL DISCLOSURE FORM (FDF). 2. Discovery shall be open. 3. Counsel shall confer as to outstanding issues prior to the use of another process. 4. Counsel shall contact Chambers if a need for an Alternative Dispute Resolution process is needed. 5. Calendar Call SET for 2-23-2016 at 11:00 am. 6. Evidentiary Hearing SET for 3-8-2016 at 1:30 pm. (stack 1);

Matter Heard

11/05/2015

 **All Pending Motions** (10:00 AM) (Judicial Officer: Elliott, Jennifer)

MINUTES

Matter Heard;

Journal Entry Details:

PLAINTIFF'S MOTION FOR JOINT LEGAL CUSTODY, JOINT PHYSICAL CUSTODY, CHILD SUPPORT PURSUANT TO WRIGHT V. OSBURN, TO CHANGE MINOR CHILD'S NAME, AND FOR ATTORNEY'S FEES AND COSTS...DEFENDANT'S OPPOSITION AND

CASE SUMMARY

CASE No. D-15-515892-C

COUNTERMOTION FOR AN ORDER FOR PATERNITY TESTING; FOR MEDIATION; FOR PRIMARY PHYSICAL CUSTODY AND DEFINED VISITATION AND FOR AN ORDER FOR CHILD SUPPORT, ATTORNEY'S FEES AND OTHER RELATED RELIEF...CASE MANAGEMENT CONFERENCE..GAYLE NATHAN ESQ'S MOTION TO WITHDRAW Ms. Nathan represented she is staying on the case and withdrew her Motion to Withdraw as counsel for Defendant. Counsel requested a re-referral to mediation as the parties are agreeable to participating in mediation, and further requested a Trial date. Parties stipulated to paternity. COURT FINDS, paternity is established. Plaintiff is the biological father of Jazlynn Rose Olivia, born 10/25/13. Argument by counsel. Court recommended the parties participate in a parenting program. COURT ORDERED, Ms. Nathan's request to withdrawn her Motion to Withdraw is GRANTED. Pursuant to STIPULATION, parties REFERRED to Family Mediation Center (FMC) for MEDIATION. A Return Hearing is SET. Order for Family Mediation Center Services FILED IN OPEN COURT. In the interim, parties shall have TEMPORARY JOINT LEGAL CUSTODY, with Defendant having TEMPORARY PRIMARY PHYSICAL CUSTODY of the minor child. Effective 11/13/15, Plaintiff shall have VISITATION every other weekend from Friday at 12:00 PM to Sunday at 4:00 PM, and Tuesdays and Thursdays from 12:00 PM to 6:00 PM in the weeks following his weekend visitation. For this year only, Plaintiff shall have Thanksgiving Day from 9:00 AM to 1:00 PM and Christmas Day from 9:00 AM to 7:00 PM (if it is not Plaintiff's regularly scheduled visitation weekend). Absent mutual agreement thereafter, parties shall follow the Court's DEFAULT HOLIDAY SCHEDULE, a copy of which was provided to the parties IN OPEN COURT. An Evidentiary Hearing is SET for 3/8/16 at 1:30 PM (Stack #1) on the issue of CUSTODY, with a Calendar Call SET for 2/23/16 at 11:00 AM. The Department's JEA shall send a Trial Management Order to counsel with the scheduling deadlines. Parties shall co-parent via e-mail ONLY IF an issue arises that is causing conflict between the parties. The parties shall notify each other (10) days prior to any CHANGE in ADDRESS, TELEPHONE NUMBER, and/or EMPLOYMENT. In addition, the change shall be filed with the Clerk's Office. The Court is not going to order that the MINOR CHILD'S SURNAME be changed. A change will be granted only upon mutual agreement of the parties. Absent an agreement, the most the Court would consider is a hyphenated surname. Counsel shall confer and attempt resolution of this issue. Based on Plaintiff's reported gross income of \$4,639.09 per month. Plaintiff shall pay Defendant CHILD SUPPORT at the statutory maximum of \$748.00 per month, retroactive to 7/1/15. Plaintiff shall file a Financial Disclosure Form with a copy of his year-to-date wage statement attached. Defendant shall continue to provide HEALTH INSURANCE for the benefit of the minor child. Plaintiff shall reimburse Defendant monthly for his one-half share of the premium cost. Counsel shall confer and determine the cost. Any unreimbursed medical, dental, optical, orthodontic or other health related expense incurred for the benefit of the minor child is to be divided equally between the parties. Either party incurring an out of pocket medical expense for the child shall provide a copy of the paid invoice/receipt to the other party within thirty days of incurring such expense, if not tendered within the thirty day period, the Court may consider it as a waiver of reimbursement. The other party will then have thirty days from receipt within which to dispute the expense in writing or reimburse the incurring party for one-half of the out of pocket expense, if not disputed or paid within the thirty day period, the party may be subject to a finding of contempt and appropriate sanctions. Pursuant to STIPULATION, Plaintiff shall reimburse Defendant one-half of the child's birthing costs upon receiving verification of the cost. Ms. Nathan shall prepare the Order from today's hearing; Ms. Ghandi shall review and sign off. 1/19/16 9:30 AM Return Hearing: FMC (Mediation) 3/8/16 1:30 PM Evidentiary Hearing (Custody) 2/23/16 11:00 AM Calendar Call ; Matter Heard

11/05/2015 **Motion for Withdrawal** (10:00 AM) (Judicial Officer: Elliott, Jennifer)

Events: 10/12/2015 Motion

Gayle Nathan's Motion for Withdrawal

12/10/2015 Reset by Court to 11/05/2015

Withdrawn;

Withdrawn

11/05/2015 **Case Management Conference** (10:00 AM) (Judicial Officer: Elliott, Jennifer)

Events: 09/01/2015 Stipulation and Order

09/01/2015 Reset by Court to 11/05/2015

Evidentiary Hearing;

Evidentiary Hearing

11/05/2015 **Opposition & Countermotion** (10:00 AM) (Judicial Officer: Elliott, Jennifer)

Events: 07/23/2015 Opposition and Countermotion

Deft's Opposition & Countermotion for an Order for Paternity Testing; for Mediation; for Primary Physical Custody and a Defined Visitation and for an Order for Child Support, Atty's

CASE SUMMARY

CASE NO. D-15-515892-C

Fees and Other Related Relief

09/01/2015 Reset by Court to 11/05/2015

Referred to Family Mediation;

Referred to Family Mediation

11/05/2015

Motion (10:00 AM) (Judicial Officer: Elliott, Jennifer)

Events: 07/10/2015 Motion

Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, Child Support Pursuant to Wright v. Osburn, to change Minor child's Name, and for Attorney's Fees and Costs

09/01/2015 Reset by Court to 11/05/2015

MINUTES



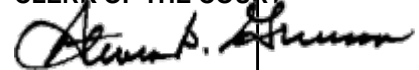
Motion

Filed by: Counter Defendant Avila, Ignacio, Jr.

Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, Child Support Pursuant to Wright v. Osburn, to change Minor child's Name, and for Attorney's Fees and Costs

Referred to Family Mediation;

Referred to Family Mediation



JUDG

Steven L. Yarmy, Esq.
Nevada Bar No. 8733
7464 West Sahara Avenue
Las Vegas, Nevada 89117
(702) 586-3513
(702) 586-3690 FAX
sly@stevenyarmylaw.com
*Unbundled Attorney for
Counter-Defendant*

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

IGNACIO AVILA, JR.,

Plaintiff,

v

ROSIE MARTINEZ,

Defendant.

HENRY OLIVA,

Counter-Defendant.

Case No: D-15-515892-C

Dept. No.: L

Hearing Date: September 11, 2018

Hearing Time: 10:00 a.m.

**ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION; AND
JUDGEMENT FOR AN AWARD OF ATTORNEY'S FEES**

Plaintiff's Motion to Reconsider the Order Entered June 20, 2018 came on for hearing on the above referenced time. Present was Counter-Defendant HENRY OLIVA, and his attorney Steven L. Yarmy, Esq., and Plaintiff IGNACIO AVILA, JR., and his attorney Arezou H. Piroozi, Esq.

Non-Final Dispositions:

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

RECEIVED
SEP 17 2018
DEPT. L

1 After considering the Pleadings filed therein, and argument by counsel, the Court
2 DENIED Plaintiff's Motion to Reconsider the Order Entered June 20, 2018.

3
4 After considering the Pleadings filed therein, and argument by counsel, the Court granted
5 Counter-Defendant HENRY OLIVA'S COUNTER MOTION FOR ATTORNEY'S FEES AND
6 COSTS in the amount of \$1,000.00 for attorney's fees.

7 Further, the Court has reduced the award of Counter-Defendant's attorney's fees to
8 \$1,000.00.

9
10 **ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

11 For the foregoing;


12 **IT IS ORDERED** that Plaintiff's Motion to Reconsider the Order Entered June 20, 2018
13 is hereby DENIED.

14 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA'S COUNTER
15 MOTION FOR ATTORNEY'S FEES AND COSTS against the Plaintiff is hereby GRANTED.

16
17 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA is awarded
18 \$1,000.00 for his attorney's fees against Plaintiff IGNACIO AVILA, JR.

19 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA'S award of
20 attorney's fees in the amount of \$1,000.00 against the Plaintiff IGNACIO AVILA, JR is hereby
21 reduced to Judgement.

22
23 Dated this 19 day of September, 2018

24
25
26 
27 DISTRICT COURT JUDGE *UP*


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1 **JUDGEMENT**

2 **IT IS ORDERED** that Counter-Defendant HENRY OLIVA recovers of and from
3 Plaintiff IGNACIO AVILA, JR. the sum of \$1,000.00 for attorney's fees.

4
5 Dated this 19th day of Sept, 2018

6
7
8 
9 DISTRICT COURT JUDGE
10 GERALD W. HARDCASTLE
11

12
13 Respectfully Submitted BY:

14 
15
16 Steven L. Yarmy, Esq.
17 Nevada Bar No. 8733
18 7464 West Sahara Avenue
19 Las Vegas, Nevada 89117
20 (702) 586-3513
21 (702) 586-3690 FAX
22 sly@stevenyarmylaw.com
23 Unbundled Attorney for
24 Counter-Defendant
25
26
27
28



1 **NOE**

2 Steven L. Yarmy, Esq.
3 Nevada Bar No. 8733
4 7454 West Sahara Avenue
5 Las Vegas, Nevada 89117
6 (702) 586-3513
7 (702) 586-3690 FAX
8 sly@stevenyarmylaw.com
9 Attorney for Counter-Defendant Henry Oliva

7 **DISTRICT COURT, FAMILY DIVISION,**
8
9 **CLARK COUNTY, NEVADA**

10 **IGNACIO AVILA, JR.,**

11 **Plaintiff,**

12 **v**

13 **ROSIE MARTINEZ,**

14 **Defendant.**

15
16 **HENRY OLIVA,**

17 **Counter-Defendant.**

Case No: D-15-515892-C

Dept. No.: L

Hearing Date: September 11, 2018

Hearing Time: 10:00 a.m.

19 **NOTICE OF ENTRY OF ORDER ON PLAINTIFF'S MOTION FOR**
20 **RECONSIDERATION; AND JUDGEMENT FOR AN AWARD OF ATTORNEY'S FEES**

21 TO: IGNACIO AVILA, JR., and his attorney, Arezou H. Piroozi, Esq.:

22 TO: ROSIE MARTINEZ:

23 **PLEASE TAKE NOTICE THAT** that on September 19, 2018 the Judge in the above
24 entitled matter executed an **Order DENYING Plaintiff's Motion** For Reconsideration of the
25 Court's June 20, 2018, and a **Judgement in Favor of Counter-Defendant** Henry Oliva against
26 the Plaintiff Ignacio Avila, Jr. for attorney's fees in the amount of \$1,000.00. The Order and
27
28

Notice of Entry of Order

1 Judgement was filed on September 21, 2018 a copy of which is attached hereto as **EXHIBIT**

2 "A"

3 DATED this 23th day of September 2018

4
5 BY: 

6 Steven L. Yarmy, Esq

7 Nevada Bar No. 8733

8 7454 West Sahara Avenue

9 Las Vegas, Nevada 89117

10 *Attorney for Counter-Defendant Henry Oliva*

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1 **CERTIFICATE OF MAILING**

2 I Steven L. Yarmy, Esq. the undersigned, HEARBY CERTIFY that service of the
3 foregoing NOTICE OF ENTRY OF ORDER ON PLAINTIFF'S MOTION FOR
4 RECONSIDERATION; AND JUDGEMENT FOR AN AWARD OF ATTORNEY'S FEES was
5 made on 25 day of September 2018 by personally depositing a true copy thereof the same in
6 the United States mail in Las Vegas,
7 Nevada, postage prepaid, addressed as follows:

8 Arezou H. Piroozi, Esq.
9 POROOZI LAW GROUP, PLLC
10 509 South Sixth Street
Las Vegas NV 89101

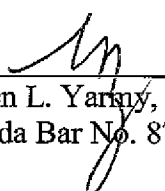
11 ROSIE ELENA MARTINEZ
12 5005 Losce Road
13 #3019
North Las Vegas, Nevada 89081

14 ROSIE ELENA MARTINEZ
15 5729 Awakening Street
16 North Las Vegas, Nevada 89081

17 ROSIE ELENA MARTINEZ
18 1221 West Warm Springs road
Henderson, Nevada 89014

19 And on September 25, 2018 VIA email as follows:

20 apiroozi@piroozilawgroup.com

21
22 
23 Steven L. Yarmy, Esq
24 Nevada Bar No. 8733

25 ///

26 ///

27 ///

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EXHIBIT "A"

Notice of Entry of Order

Steven D. Grierson

JUDG

Steven L. Yarmy, Esq.
Nevada Bar No. 8733
7464 West Sahara Avenue
Las Vegas, Nevada 89117
(702) 586-3513
(702) 586-3690 FAX
sly@stevenyarmylaw.com
*Unbundled Attorney for
Counter-Defendant*

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

IGNACIO AVILA, JR.,

Plaintiff,

v

ROSIE MARTINEZ,

Defendant.

HENRY OLIVA,

Counter-Defendant.

Case No: D-15-515892-C

Dept. No.: L

Hearing Date: September 11, 2018

Hearing Time: 10:00 a.m.

**ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION; AND
JUDGEMENT FOR AN AWARD OF ATTORNEY'S FEES**

Plaintiff's Motion to Reconsider the Order Entered June 20, 2018 came on for hearing on the above referenced time. Present was Counter-Defendant HENRY OLIVA, and his attorney Steven L. Yarmy, Esq., and Plaintiff IGNACIO AVILA, JR., and his attorney Arezou H. Piroozi, Esq.

Non-Trial Dispositions:

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

RECEIVED
SEP 17 2018
DEPT. L

1 After considering the Pleadings filed therein, and argument by counsel, the Court
2 DENIED Plaintiff's Motion to Reconsider the Order Entered June 20, 2018.
3

4 After considering the Pleadings filed therein, and argument by counsel, the Court granted
5 Counter-Defendant HENRY OLIVA'S COUNTER MOTION FOR ATTORNEY'S FEES AND
6 COSTS in the amount of \$1,000.00 for attorney's fees.

7 Further, the Court has reduced the award of Counter-Defendant's attorney's fees to
8 \$1,000.00.
9

10 **ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

11 For the foregoing,


12 **IT IS ORDERED** that Plaintiff's Motion to Reconsider the Order Entered June 20, 2018
13 is hereby DENIED.

14 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA'S COUNTER
15 MOTION FOR ATTORNEY'S FEES AND COSTS against the Plaintiff is hereby GRANTED.
16

17 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA is awarded
18 \$1,000.00 for his attorney's fees against Plaintiff IGNACIO AVILA, JR.

19 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA'S award of
20 attorney's fees in the amount of \$1,000.00 against the Plaintiff IGNACIO AVILA, JR is hereby
21 reduced to Judgement.
22

23 Dated this 19 day of September, 2018
24

25 
26 DISTRICT COURT JUDGE UP
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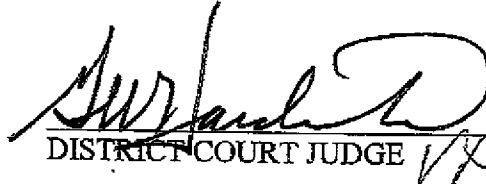
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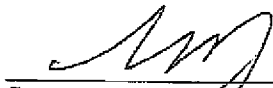
JUDGEMENT

IT IS ORDERED that Counter-Defendant HENRY OLIVA recovers of and from Plaintiff IGNACIO AVILA, JR. the sum of \$1,000.00 for attorney's fees.

Dated this 19th day of Sept, 2018


DISTRICT COURT JUDGE
GERALD W. HARDCASTLE

Respectfully Submitted BY:



Steven L. Yarmy, Esq.
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7464 West Sahara Avenue
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(702) 586-3690 FAX
sly@stevenyarmylaw.com
Unbundled Attorney for
Counter-Defendant

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

November 05, 2015

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

November 05, 10:00 AM All Pending Motions
2015

HEARD BY: Elliott, Jennifer**COURTROOM:** Courtroom 06**COURT CLERK:** Victoria Pott**PARTIES:**

Henry Oliva, Third Party Defendant, not
present
Ignacio Avila, Plaintiff, Counter Defendant, Nedda Ghandi, Attorney, present
present
Jazlynn Martinez-Olivia, Subject Minor, not
present
Rosie Martinez, Defendant, Counter Claimant, Pro Se
present

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR JOINT LEGAL CUSTODY, JOINT PHYSICAL CUSTODY, CHILD SUPPORT PURSUANT TO WRIGHT V. OSBURN, TO CHANGE MINOR CHILD'S NAME, AND FOR ATTORNEY'S FEES AND COSTS...DEFENDANT'S OPPOSITION AND COUNTERMOTION FOR AN ORDER FOR PATERNITY TESTING; FOR MEDIATION; FOR PRIMARY PHYSICAL CUSTODY AND DEFINED VISITATION AND FOR AN ORDER FOR CHILD SUPPORT, ATTORNEY'S FEES AND OTHER RELATED RELIEF...CASE MANAGEMENT CONFERENCE..GAYLE NATHAN ESQ'S MOTION TO WITHDRAW

Ms. Nathan represented she is staying on the case and withdrew her Motion to Withdraw as counsel for Defendant.

Counsel requested a re-referral to mediation as the parties are agreeable to participating in mediation,

PRINT DATE:	10/22/2018	Page 1 of 18	Minutes Date:	November 05, 2015
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

and further requested a Trial date.

Parties stipulated to paternity. COURT FINDS, paternity is established. Plaintiff is the biological father of Jazlynn Rose Olivia, born 10/25/13.

Argument by counsel.

Court recommended the parties participate in a parenting program.

COURT ORDERED, Ms. Nathan's request to withdrawn her Motion to Withdraw is GRANTED.

Pursuant to STIPULATION, parties REFERRED to Family Mediation Center (FMC) for MEDIATION. A Return Hearing is SET. Order for Family Mediation Center Services FILED IN OPEN COURT. In the interim, parties shall have TEMPORARY JOINT LEGAL CUSTODY, with Defendant having TEMPORARY PRIMARY PHYSICAL CUSTODY of the minor child. Effective 11/13/15, Plaintiff shall have VISITATION every other weekend from Friday at 12:00 PM to Sunday at 4:00 PM, and Tuesdays and Thursdays from 12:00 PM to 6:00 PM in the weeks following his weekend visitation. For this year only, Plaintiff shall have Thanksgiving Day from 9:00 AM to 1:00 PM and Christmas Day from 9:00 AM to 7:00 PM (if it is not Plaintiff's regularly scheduled visitation weekend). Absent mutual agreement thereafter, parties shall follow the Court's DEFAULT HOLIDAY SCHEDULE, a copy of which was provided to the parties IN OPEN COURT.

An Evidentiary Hearing is SET for 3/8/16 at 1:30 PM (Stack #1) on the issue of CUSTODY, with a Calendar Call SET for 2/23/16 at 11:00 AM. The Department's JEA shall send a Trial Management Order to counsel with the scheduling deadlines.

Parties shall co-parent via e-mail ONLY IF an issue arises that is causing conflict between the parties. The parties shall notify each other (10) days prior to any CHANGE in ADDRESS, TELEPHONE NUMBER, and/or EMPLOYMENT. In addition, the change shall be filed with the Clerk s Office.

The Court is not going to order that the MINOR CHILD'S SURNAME be changed. A change will be granted only upon mutual agreement of the parties. Absent an agreement, the most the Court would consider is a hyphenated surname. Counsel shall confer and attempt resolution of this issue.

Based on Plaintiff's reported gross income of \$4,639.09 per month. Plaintiff shall pay Defendant CHILD SUPPORT at the statutory maximum of \$748.00 per month, retroactive to 7/1/15. Plaintiff shall file a Financial Disclosure Form with a copy of his year-to-date wage statement attached.

Defendant shall continue to provide HEALTH INSURANCE for the benefit of the minor child. Plaintiff shall reimburse Defendant monthly for his one-half share of the premium cost. Counsel shall confer and determine the cost. Any unreimbursed medical, dental, optical, orthodontic or other health related expense incurred for the benefit of the minor child is to be divided equally between the parties. Either party incurring an out of pocket medical expense for the child shall provide a copy of

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the paid invoice/receipt to the other party within thirty days of incurring such expense, if not tendered within the thirty day period, the Court may consider it as a waiver of reimbursement. The other party will then have thirty days from receipt within which to dispute the expense in writing or reimburse the incurring party for one-half of the out of pocket expense, if not disputed or paid within the thirty day period, the party may be subject to a finding of contempt and appropriate sanctions.

Pursuant to STIPULATION, Plaintiff shall reimburse Defendant one-half of the child's birthing costs upon receiving verification of the cost.

Ms. Nathan shall prepare the Order from today's hearing; Ms. Ghandi shall review and sign off.

1/19/16 9:30 AM Return Hearing: FMC (Mediation)

3/8/16 1:30 PM Evidentiary Hearing (Custody)

2/23/16 11:00 AM Calendar Call

INTERIM CONDITIONS:

FUTURE HEARINGS: Jan 19, 2016 9:30AM Return Hearing
FMC (Mediation)
Courtroom 06 Elliott, Jennifer

Feb 23, 2016 11:00AM Calendar Call
Courtroom 06 Elliott, Jennifer

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

November 05, 2015

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

**November 05, 10:00 AM Motion for Withdrawal
2015**

HEARD BY: Elliott, Jennifer

COURTROOM: Courtroom 06

COURT CLERK: Victoria Pott

PARTIES:

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Arezou Piroozi, Attorney, not present
not present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
not present

JOURNAL ENTRIES

INTERIM CONDITIONS:

FUTURE HEARINGS: Jan 19, 2016 9:30AM Return Hearing
FMC (Mediation)
Courtroom 06 Elliott, Jennifer

Feb 23, 2016 11:00AM Calendar Call
Courtroom 06 Elliott, Jennifer

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

January 19, 2016

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

January 19, 2016 9:30 AM Return Hearing

HEARD BY: Elliott, Jennifer

COURTROOM: Courtroom 06

COURT CLERK: Jefferyann Rouse

PARTIES:

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Nedda Ghandi, Attorney, present
present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
not present

JOURNAL ENTRIES

- RETURN HEARING: FMC (MEDIATION)

Upon the matter being called the court noted the agreement reached by parties.

Opening remarks by Attorney Nathan who advised the court Defendant/Mom was at home with the children whom are sick.

The Court noted the correction as to the minutes from the hearing held on 11-5-2015.

THE COURT further noted concerns as to a settlement being reached and parties attending UNLV Mediation.

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THE COURT ORDERED,

1. Defendant/Mom shall file a FINANCIAL DISCLOSURE FORM (FDF).
2. Discovery shall be open.
3. Counsel shall confer as to outstanding issues prior to the use of another process.
4. Counsel shall contact Chambers if a need for an Alternative Dispute Resolution process is needed.
5. Calendar Call SET for 2-23-2016 at 11:00 am.
6. Evidentiary Hearing SET for 3-8-2016 at 1:30 pm. (stack 1)

INTERIM CONDITIONS:

FUTURE HEARINGS: Jan 19, 2016 9:30AM Return Hearing
FMC (Mediation)
Courtroom 06 Elliott, Jennifer

Feb 23, 2016 11:00AM Calendar Call
Courtroom 06 Elliott, Jennifer

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

February 23, 2016

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

February 23, 2016 11:00 AM Calendar Call

HEARD BY: Elliott, Jennifer

COURTROOM: Courtroom 06

COURT CLERK: Jefferyann Rouse

PARTIES:

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Nedda Ghandi, Attorney, present
present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
present

JOURNAL ENTRIES

- CALENDAR CALL

The Court noted Attorney Nathan's filed a Motion to Withdraw as Attorney of Record for Defendant due to lack of cooperation. The Court further noted Ms. Nathan's Motion was granted.

The Court inquired as to a settlement being reached. Upon inquiry Attorney Ghandi advised the court parties were able to reach an agreement.

Parties sworn and testified. The Canvassed Plaintiff and Defendant as to the terms of the agreement.

THE COURT ORDERED,

Parties AGREED to keep the SCHEDULE with TEMPORARY ORDERS currently in place becoming

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PERMANENT ORDERS.

Parties shall have JOINT LEGAL CUSTODY of the minor child.

Defendant shall have PRIMARY PHYSICAL CUSTODY of the minor child.

Plaintiff shall pay Defendant CHILD SUPPORT in the amount of \$400.00 per month, plus an ADDITIONAL \$50.00 per month towards CHILD SUPPORT ARREARS for a total monthly SUPPORT OBLIGATION of \$450.00 per month, until CHILD SUPPORT ARREARS are PAID IN FULL.

Attorney Ghandi shall work with parties as to the ESTABLISHMENT of CHILD SUPPORT ARREARS, so that there is a date as to when Plaintiff's CHILD SUPPORT ARREARS are PAID IN FULL.

The minor child's name shall be changed to JAZLYNN ROSE MARTINEZ AVILA.

The minor child's BIRTH CERTIFICATE shall be AMENDED to reflect the child's name change.

Defendant shall have (30) days to provide all UNCOVERED MEDICAL COSTS to Opposing Counsel.

UNCOVERED MEDICAL BILLS submitted to Opposing Counsel shall be from the date of the child's birth (10-2013) through today date (2-23-2016), and include BIRTHING COSTS.

Both parties shall provide MEDICAL INSURANCE COVERAGE for the minor child.

Neither party shall receive an OFF-SET as to MEDICAL INSURANCE COVERAGE.

Parties shall utilize Department L's Default Holiday Plan.

Attorney Ghandi shall attach the Default Holiday Plan to the final Decree of Custody Order.

Attorney Gayle Nathan's MOTION to WITHDRAW as ATTORNEY of RECORD shall be GRANTED.

Hearing SET for 3-8-2016 shall be VACATED.

Non-Jury Trial SET for 3-8-2016 shall be VACATED.

Attorney Ghandi shall prepare the order of the court. Defendant shall have (7) days to review and sign off.

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INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

January 25, 2018

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

January 25, 2018 9:00 AM All Pending Motions

HEARD BY: Elliott, Jennifer**COURTROOM:** Courtroom 06**COURT CLERK:** Victoria Pott**PARTIES:**

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant,
present

Arezou Piroozi, Attorney, present

Ignacio Avila, Plaintiff, not present

Arezou Piroozi, Attorney, present

Ignacio Avila, Plaintiff, not present

Arezou Piroozi, Attorney, present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
present

JOURNAL ENTRIES

- PLAINTIFF'S VERIFIED MOTION TO AMEND THE COMPLAINT FOR CUSTODY, TO ESTABLISH JOINT LEGAL AND JOINT PHYSICAL CUSTODY, TO SET ASIDE THE CUSTODY DECREE, TO MODIFY CUSTODY, FOR CHILD SUPPORT, AND FOR ATTORNEY'S FEES AND COSTS...PLAINTIFF'S MOTION TO JOIN HENRY OLIVA AS A DEFENDANT, FOR THE LIMITED PURPOSE OF DETERMINING PATERNITY OF THE MINOR CHILD, ALAN OLIVA

Soraya Veiga, Bar #7944, present on behalf of Defendant in an UNBUNDLED capacity. Steven Yarmy, Bar #8733, present on behalf of Henry Oliva in an UNBUNDLED capacity.

Plaintiff, Defendant, and Henry Oliva sworn and testified.

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Argument by Ms. Piroozi, Ms. Veiga, and Mr. Yarmy regarding Plaintiff's Motions and allegations of fraud. Plaintiff alleged Mr. Oliva presented with a false DNA test.

Court read relative case law on the record.

COURT ORDERED, the Default filed on 1/24/18 shall be STRICKEN from the record. Henry Oliva shall be added as a third party Defendant to this case. Court is not ordering a Paternity Test absent a STIPULATION. Parties REFERRED to Family Mediation Center (FMC) for MEDIATION. A Return Hearing is SET for 3/29/18 at 9:30 AM. Order for Family Mediation Center Services FILED IN OPEN COURT. If parties are unable to reach an agreement, counsel shall file a brief as to whether fraud can be imputed to the Defendant when the fraud was committed by a person outside of the case. Counsel may further request an earlier return date.

The parties shall keep each other apprised of any CHANGE in ADDRESS, TELEPHONE NUMBER, and EMPLOYMENT, ten days prior to making the change. In addition, the change in address and telephone number shall be filed with the Clerk s Office.

Pursuant to EDCR 5.301, none of the parties shall discuss any part of this litigation with the children or in the presence of the children.

Ms. Piroozi shall prepare the Order from today's hearing; Ms. Veiga and Mr. Yarmy shall have 7 judicial days to review and sign off.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES****March 29, 2018**

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

March 29, 2018 7:30 AM Minute Order

HEARD BY: Elliott, Jennifer**COURTROOM:** Courtroom 06**COURT CLERK:** Victoria Pott**PARTIES:**

Henry Oliva, Third Party Defendant, not present
 Ignacio Avila, Plaintiff, Counter Defendant, Arezou Piroozi, Attorney, not present
 not present
 Jazlynn Martinez-Olivia, Subject Minor, not present
 Rosie Martinez, Defendant, Counter Claimant, Pro Se
 not present

JOURNAL ENTRIES

- The Court in review of its March 29, 2018 calendar notes the following:

1. This case was initiated by Plaintiff's complaint for custody of Jazlynn Rose Martinez (DOB 10/25/13).
2. Plaintiff admitted that through his own "self-help" DNA test, he found out on January 20, 2017, that Defendant's child Alan (DOB 10/18/11) was also his biological son.
3. Thereafter, the First Amended Decree of Custody, drafted by Plaintiff's counsel, was filed March 1, 2017 wherein only the minor child Jazlyn was included as a child born to Plaintiff and Defendant.
4. Plaintiff filed an Amended Complaint for Custody November 1, 2017 which included the minor child Alan (DOB 10/18/11).
5. At the January 25, 2018 hearing, Plaintiff was represented by Arezou Piroozi, Esq., Defendant was represented by Soraya Veiga, Esq. (unbundled) and Henry Oliva was represented by Steven Yarmy, Esq. (unbundled).

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6. The Court Ordered that Henry Oliva be added as a third party Defendant in this case.
7. After listening to argument at the January 25, 2018 hearing, the Court summarized the relevant paternity law into the record as reiterated below.
8. The Court Found and Ordered that the child was over six (6) years of age, that Henry Oliva was the named father on the birth certificate, that the child had been living with Defendant Rosie Martinez and Henry Oliva since his birth, that Plaintiff's "self-help" positive DNA test was provided to Plaintiff PRIOR to his attorney having drafted the First Amended Decree of Custody filed March 1, 2017 wherein only the minor child Jazlynn was included as a child born to Plaintiff and Defendant and that absent clear and convincing evidence of fraud on Defendant's part, or absent a stipulation between the parties, his request for Court-Ordered paternity tests of himself and Henry Oliva were denied.
9. Plaintiff advised that he had taken Alan on visitation many times when he had Jazlynn for visitation. The Court advised that he may have established a meaningful relationship with the child under NRS 125C.050 and the parties could mediate a stipulated schedule if they desired.
10. Plaintiff thereafter advised the Court that Mr. Oliva had recently text of a portion of a positive DNA test without any named father designed to make Plaintiff believe that he was the father of the minor child Alan. The Court made no findings as to this text.
11. The Court sent all three (3) parties to mediation and Ordered that if there was an impasse, Plaintiff's counsel shall file a legal brief if Plaintiff felt he had clear and convincing evidence of fraud that could be imputed to Defendant pursuant to paternity law.
12. The parties were Ordered not to discuss any part of this litigation with or in the presence of the children pursuant to EDCR 5.301.
13. The Court is in receipt of a March 1, 2018 letter from the Family Mediation Center (FMC) stating that the parties reached an impasse.
14. No further briefing has been filed in this case.
15. Plaintiff has not filed a motion for a meaningful relationship with the minor child Alan, which the Court advised he may be able to establish, if it is true that he had visitation with Alan many times when he had his visitation with Jazlyn.
16. Ms. Piroozi failed to file the Order from the January 25, 2018 hearing and thus the Court files this Order.

The Court FINDS that pursuant to NRS 440.610, the facts listed in the child's birth certificate become prima facie evidence of the facts stated therein. Thus, a person listed as the father on the birth certificate is presumed to be the father of the child if paternity becomes disputed.

NRS 440.610 Certificate as prima facie evidence.

Each certificate, as provided for in this chapter, filed within 6 months after the time prescribed for their filing, shall be prima facie evidence of the facts therein stated. Data pertaining to the father of a child is such evidence if the alleged father is, or becomes, the husband of the mother in a legal marriage; if not, the data pertaining to the father of a child is not such evidence in any civil or criminal proceeding adverse to the interests of the alleged father, or of his heirs, devisees or other successors in interest, if the paternity is controverted.

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The following statutory presumption applies to Paternity findings:

N.R.S. 126.051 Presumptions of Paternity

1. A man is presumed to be the natural father of a child if:

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.

"Under the statutory scheme for determining paternity, the district court is not compelled to determine, on the basis of deoxyribonucleic acid (DNA) test, that a man is or is not a child's father as a matter of law, N.R.S. 126.051, 126.121. *Love v. Love*, 1998, 959 P.2d 523, 114 Nev. 572. The statutory scheme for determining paternity clearly reflects the legislature's intent to allow non-biological factors to become critical. *Love v. Love*, 1998, 959 P.2d 523, 114 Nev. 572.

"The Legislature has made it clear that although it is now possible to determine biological paternity with certainty, biology is not the predominant consideration in determining parental responsibility once a child has reached his or her third year of life, (*In re Marriage of B.*, supra, 124 Cal.App.3d at p. 531, 177 Cal.Rptr. 429.) *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1449, 53 Cal. Rptr. 2d 439, 447 (1996).

"The state has an interest in preserving and protecting the developed parent-child and sibling relationships which give young children social and emotional strength and stability. [Citation omitted.] This interest is served notwithstanding termination of the mother's marital relationship with the presumed father. (*Susan H. v. Jack S.*, supra, 30 Cal.App.4th at pp. 1442 1443, 37 Cal.Rptr.2d 120.), *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1450, 53 Cal. Rptr. 2d 439, 448 (1996).

Biology will only control a determination of paternal responsibility for a limited period early in a child's life and thereafter the predominant consideration must be the nature of the presumed father's social relationship with the child. *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1446, 53 Cal. Rptr. 2d 439, 446 (1996).

Under California Statutory Law, In 1980 the Legislature added what is now section 7541 providing for rebuttal of the presumption by blood testing requested within two years following a child's birth, *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1444, 53 Cal. Rptr. 2d 439, 444-45 (1996). After two (2) years absent clear and convincing evidence of fraud or mistake of fact, a request for a paternity test may be denied.

"In the case of an older child the familial relationship between the child and the man purporting to be the child's father is considerably more palpable than the biological relationship of actual paternity. A man who has lived with a child, treating it as his son or daughter, has developed a relationship with the child that should not be lightly dissolved and upon which liability for continued responsibility to the child might be predicated. This social relationship is much more important, to the child at least, than a biological relationship of actual paternity, *In re Marriage of Freeman*, 45 Cal. App. 4th 1437,

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1445, 53 Cal. Rptr. 2d 439, 445 (1996).

Plaintiff is also barred by claim preclusion, which is a defense that prevents the re-litigation of a previously resolved claim. *Elizondo v. Hood Mach., Inc.*, 129 Nev., Adv. Op. 84, 312 P.3d 479, 483 (2013). Precluding the re-litigation of issues such as paternity and other valid judgments, "protect[s] the finality of decisions and prevent[s] the proliferation of litigation" that could have been brought in the prior action. *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev., Adv. Op. 80, 266 P.3d 602, 605 (2011) (internal quotations omitted). This doctrine can apply to divorce decrees incorporating marital settlement agreements that resolve issues of paternity and child support obligations. *Love v. Love*, 114 Nev. 572, 575, 959 P.2d 523, 526 (1998); *Willerton v. Bassham*, 111 Nev. 10, 14, 889 P.2d 823, 825 (1995).

Claim preclusion applies when "(1) the final judgment is valid, ... (2) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case, and (3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, or the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a good reason for not having done so." *Weddell v. Sharp*, 131 Nev., Adv. Op. 28, 350 P.3d 80, 85 (2015). The Court finds in the case at bar that Plaintiff is precluded from raising this claim based on judgments filed December 14, 2015, June 28, 2016, July 22, 2016, February 8, 2017 and March 1, 2017.

Although there is a valid policy concern about the unfairness of being obligated to support someone else's child, however, there is a balance between that policy interest and claim preclusion's policy of protecting the finality of judgments as it carves out an exception to claim preclusion for previous judgments that were obtained by extrinsic fraud. (See *Love*, 114 Nev. at 576, 959 P.2d at 526.) (Emphasis added.)

Where there is an older child (age 3 or older), absent clear and convincing evidence of fraud, the policy of the law in determining paternity falls on the side of societal interests in protecting children by providing consistency, security, support and maintaining the known family structure. This may include the attachment and bond they have developed as family members which is deemed more compelling than biology when a man has been standing in the role as the child's father, holding the child out as his own, and they have developed an identity as parent and child--as a family. The child in this case is six and a half (6.5) years old; the time to contest paternity has long past.

The Court FINDS that paternity cannot be challenged as the child is now six and one half (6.5) years old and Plaintiff has failed to challenge the child's paternity in a timely manner in the instant case.

The Court ORDERS that other than joining Henry Oliva as a necessary party, Plaintiff's MOTION SHALL BE DENIED and the case shall be closed.

The Court FURTHER ORDERS that parties SHALL NOT DISCUSS this case with the minor children. Children can suffer hurt and loss when a parent determines later in their minority to contest

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paternity.

The parties are hereby put on notice that they are not to discuss this or any other Family Court litigation with the minor child pursuant to EDCR 5.301 below:

EDCR 5.301

Confidentiality, best interests of children. Absent a written order of the court to the contrary, all lawyers, litigants, witnesses or other parties privy to matters being heard by the family division are prohibited from:

- (a) Discussing the issues, proceedings, pleadings, or papers on file with the court with the minor children of the litigants;
- (b) Allowing any minor child to review the record of the proceedings before the court, whether in the form of transcripts, audio cassettes or audio-visual tapes; or
- (c) Leaving such materials in a place where it is likely or foreseeable that a child will access those materials.

The Clerk shall remove the matter from the Court's calendar set March 29, 2018 at 9:30 a.m. pursuant to EDCR 2.23. Department L JEA shall advise parties and counsel there shall be no appearances and this case has been closed. Should a final Order be desired, Ms. Piroozi may draft an Order from this minute order and both Ms. Martinez and Mr. Oliva shall review and sign off or waive signature.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES****September 11, 2018**

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

**September 11, 10:00 AM All Pending Motions
2018**

HEARD BY: Hardcastle, Gerald W.**COURTROOM:** Courtroom 06**COURT CLERK:** Victoria Pott**PARTIES:**

Henry Oliva, Third Party Defendant, present	
Ignacio Avila, Plaintiff, Counter Defendant, not present	Arezou Piroozi, Attorney, present
Ignacio Avila, Plaintiff, not present	Arezou Piroozi, Attorney, present
Ignacio Avila, Plaintiff, present	Arezou Piroozi, Attorney, present
Jazlynn Martinez-Olivia, Subject Minor, not present	
Rosie Martinez, Defendant, Counter Claimant, not present	Pro Se

JOURNAL ENTRIES

- PLAINTIFF'S MOTION TO RECONSIDER THE ORDER ENTERED June 20, 2018...COUNTER-DEFENDANT HENRY OLIVA'S OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER THE ORDER ENTERED June 20, 2018; AND OPPOSITION TO PLAINTIFF'S TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS AND COUNTER-DEFENDANT'S MOTION FOR ATTORNEY'S FEES AND COSTS

Steven Yarmy, Bar #8733, present on behalf of Henry Oliva, putative father.

Court noted it reviewed the motion and the underlying decision, and the COURT FINDS that Judge Elliott carefully considered the facts and applied the law in issuing her decision, and this Court is not going to interfere with that decision.

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Based on the foregoing, COURT ORDERED, Plaintiff's Motion to Reconsider the Order entered June 20, 2018 is DENIED. ATTORNEY'S FEES are awarded in favor of Defendant against Plaintiff in the amount of \$1,000.00. This amount is REDUCED TO JUDGMENT, collectible by all lawful means.

Mr. Yarmy shall prepare the Order from today's hearing; Ms. Piroozi shall review and sign off.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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

AREZOU H. PIROOZI, ESQ.
509 S. 6TH ST.
LAS VEGAS, NV 89101

DATE: October 22, 2018
CASE: D-15-515892-C

RE CASE: IGNACIO AVILA, JR. vs. ROSIE MARTINEZ

NOTICE OF APPEAL FILED: October 18, 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; DISTRICT COURT DOCKET ENTRIES; ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION; AND JUDGMENT FOR AN AWARD OF ATTORNEY'S FEES; NOTICE OF ENTRY OF ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION; AND JUDGMENT FOR AN AWARD OF ATTORNEY'S FEES; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

IGNACIO AVILA, JR.,

Plaintiff(s),

vs.

ROSIE MARTINEZ,

Defendant(s),

Case No: D-15-515892-C

Dept No: L

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 22 day of October 2018.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk