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9 Attorney for Appellant, Ignacio Avila, Jr.

Electronically Filed  
Dec 21 2018 12:07 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

10 **IN THE SUPREME COURT OF THE STATE OF NEVADA**  
11 **OFFICE OF THE CLERK**

12 IGNACIO AVILA, JR.,

13 Appellant,

14 vs.

15 ROSIE ELENA MARTINEZ,

16 Respondent.

SUPREME COURT CASE NO: 77242

District Court Case No: D515892

17 **DOCKETING STATEMENT**

18 **CIVIL APPEALS**

19 **1. Judicial District:** Eighth Department: L

20 County: Clark

Judge: Jennifer L. Elliot and Gerald W. Hardcastle

21 District Ct. Docket No.: D-15-515892-C

22 ///

23 ///

1 **2. Attorney filing this docket statement:**

2 Attorney: Arezou H. Piroozi, Esq. Telephone: (702) 260-1010

3 Firm: Piroozi Law Group, PLLC.

4 Address: 509 South 6<sup>th</sup> Street, Las Vegas, Nevada 89101

5 Client(s): Ignacio Avila, Jr.

6  
7 If this is a joint statement completed on behalf of multiple appellants, add the names  
8 and addresses of other counsel and the names of their clients on an additional sheet  
9 accompanied by a certificate that they concur in the filing of this statement.

10 **3. Attorney(s) representing respondent Rosie Ellena Martinez:**

11 Attorney: Pro Se

12 Firm: N/A

13 Address: 5729 Awakening St., North Las Vegas, NV 89081

14 Client(s): N/A

15 **Attorney(s) representing Third Party respondent Henry Oliva:**

16 Attorney: Steven L. Yarmy, Esq.

17 Firm: N/A

18 Address: 7454 West Sahara Avenue, Las Vegas, Nevada 89117

19 Client(s): N/A

20 **4. Nature of disposition below (check all that apply):**

21 ☐ Judgment after bench trial ☐ Grant/Denial of NRCP 60(b) relief

22 ☐ Judgment after jury verdict ☐ Grant/Denial of injunction

23 ☐ Summary judgment ☐ Grant/Denial of declaratory relief

☐ Default judgment ☐ Review of agency determination  
☐ Dismissal ☐ Divorce decree:  
☐ Lack of jurisdiction ☐ Original ☐ Modification  
☐ Failure to state a claim ☐ Other disposition (specify)  
☐ Failure to prosecute  
☒ Other (specify): Appeal from a final order, specifically, the Notice of Entry of the Order entered on June 20, 2018, which is a final order from 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, and from the Notice of Entry of the Order denying Plaintiff's tolling Motion For Reconsideration; And Judgement For An Award Of Attorney's Fees entered on September 25, 2018. Said motion was a tolling motion pursuant to *AA PRIMO BUILDERS, LLC v. Washington*, 126 Nev. Adv. Op. 53, 245 P. 3d 1190 (2010).

**5. Does this appeal raise issues concerning any of the following:**

- ☒ Child custody ☐ Termination of parental rights  
☐ Venue ☐ Grant/denial of injunction or TRO  
☐ Adoption ☐ Juvenile matters

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

1 N/A

2 **7. Pending and prior proceedings in other courts.** List the case name, number and  
3 court of all pending and prior proceedings in other courts which are related to this  
4 appeal (e.g., bankruptcy, consolidation or bifurcated proceedings) and their dates of  
5 disposition:

6 N/A

7 **8. Nature of the action.** Briefly describe the nature of the action, including a list of the  
8 causes of action pleaded, and the result below:

9 This case is an appeal from the findings of fact and conclusions of law from the  
10 final judgment entered on June 20, 2018 and the subsequent order from the tolling  
11 motion entered September 25, 2018. The Appellant has two children with the  
12 Respondent, a boy, Alan, born October 18, 2011, and a girl, Jozlynn, born October 25,  
13 2013. The Respondent and a third party, Henry Oliva, represented to the Appellant that  
14 Alan was not his child, but rather the child of the Respondent and Henry. After Jozlynn  
15 was born, the district court entered an order granting the respondent primary physical  
16 custody, with the parties sharing joint legal custody. In 2018, the Appellant suspected  
17 that Alan was his child, and that he had been lied to. This lie included the Appellant  
18 being presented with a false DNA test. The Appellant self-administered a DNA sample,  
19 and he found out that Alan was his child. The Appellant filed pleadings asking that his  
20 paternity be established, and that he be granted joint custody of both children. The  
21 district court denied the Appellant an evidentiary hearing, and it found that the  
22 Appellant had not overcome the presumption that that third party, Henry, was the father  
23 of Alan.

24 **9. Issues on appeal.** State concisely the principal issue(s) in this appeal:

25 Did the District abuse its discretion, or, in the alternative, commit plain error  
26 when it denied the Appellant an evidentiary hearing on the matter of paternity and,  
27 therefore, the matter of custody? Did the District abuse its discretion, or, in the  
28 alternative, commit plain error when it denied the Appellant a paternity test to  
determine if he was the natural parent of the child, Alan.

**10. Pending proceedings in this court raising the same or similar issues.** If you are  
aware of any proceeding presently pending before this court which raises the same or

1 similar issues raised in this appeal, list the case name and docket number and identify  
2 the same or similar issues raised:

3 N/A

4 **11. Constitution issues.** If this appeal challenges the constitutionality of a statute, and  
5 the state, any state agency, or any officer or employee thereof is not a party to this  
6 appeal, have you notified the clerk of this court and the attorney general in accordance  
7 with NRAP 44 and NRS 30.130?

8 N/A

9 If not, explain: N/A

10 **12. Other issues.** Does this appeal involve any of the following issues?

11 ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))

12 ☐ An issue arising under the United States and/or Nevada Constitutions

13 ☐ A substantial issue of first-impression

14 ☐ An issue of public policy

15 ☐ An issue where en banc consideration is necessary to maintain uniformity of this  
16 court's decisions

17 ☐ A ballot question

18 If so, explain: N/A

19  
20 **13. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

21  
22 **14. Judicial disqualification.** Do you intend to file a motion to disqualify or have a  
23 justice recuse him/herself from participation in this appeal. If so, which Justice?

24 NO

## TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from: June 20, 2018 and September 25, 2018. Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.**

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A

16. **Date written notice of entry of judgment or order served June 20, 2018 and September 25, 2018. Attach a copy, including proof of service, for each order or judgment appealed from.**

(a) Was service by delivery or by mail US Mail (specify). By US MAIL.

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing: A Motion for Reconsideration, which acted as a motion pursuant to NRCP 52(b), in that it asked the district court to amend its judgment.

**Attach copies of all post-trial tolling motions.**

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.**

(b) Date of entry of written order resolving tolling motion: September 25, 2018.  
**Attach a copy.**

(c) Date written notice of entry of order resolving motion served: June 20, 2018.  
**Attach a copy, including proof of service.**

(i) Was service by delivery or by mail (specify): Mail

18. **Date notice of appeal was filed: October 18, 2018.**

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:  
N/A

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other: NRAP 4(a).

### SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

NRAP 3A(b)(1) ☒

NRS 155.190 ☐ (specify subsection)

NRAP 3A(b)(1) ☐

NRAP 3A(b)(2) ☐

NRAP 3A(b)(3) ☐

NRS 38.205 ☐

NRS 233B.150 ☐

NRS 703.376 ☐

Other (specify):

Explain how each authority provides a basis for appeal from the judgment or order:

On June 20, 2018, the District Court entered its order from the 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, filed January 25, 2018. The Appellant filed his Notice of Appeal on October 18, 2018, after the District Court denied his tolling motion, styled as a Motion to Reconsider, on September 25, 2018, pursuant to NRAP 3A(b)(1).

**COMPLETE THE FOLLOWING SECTION ONLY IF MORE THAN ONE CLAIM FOR RELIEF WAS PRESENTED IN THE ACTION (WHETHER AS A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM) OR IF MULTIPLE PARTIES WERE INVOLVED IN THE ACTION. Attach separate sheets as necessary.**

1 **21. List all parties involved in the action in the district court:**

2 N/A

3 (a) If all parties in the district court are not parties to this appeal, explain in detail  
4 why those parties are not involved in this appeal, *e.g.*, formally dismissed, not  
5 served, or other:

6 N/A

7 **22. Give a brief description (3 to 5 words) of each party's separate claims,**  
8 **counterclaims, cross-claims or third-party claims, and the trial court's disposition**  
9 **of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation),**  
10 **and the date of disposition of each claim. Attach a copy of each disposition.**

11 N/A

12 **23. Attach copies of the last-filed version of all complaints, counterclaims, and/or**  
13 **cross-claims filed in the district court.**

14 N/A

15 **24. Did the judgment or order appealed from adjudicate ALL the claims alleged**  
16 **below and the rights and liabilities of ALL the parties to the action below:**

17 Yes ☒ No ☐

18  
19 **25. If you answered "No" to the immediately previous question, complete the**  
20 **following:**

21 (a) Specify the claims remaining pending below:

22 N/A

23 (b) Specify the parties remaining below:

24 N/A

25  
26 (c) Did the district court certify the judgment or order appealed from as a final  
27 judgment pursuant to NRCP 54(b): N/A



1 Yes ☐ No ☐ If "Yes", attach a copy of the certification or order, including  
2 any notice of entry and proof of service.

3 (d) Did the district court make an express determination, pursuant to NRCP 54(b),  
4 that there is no just reason for delay and an express direction for the entry of judgment:

5 N/A

6 Yes ☐ No ☐

7 26. If you answered "No" to any part of question 25, explain the basis for seeking  
8 appellate review (e.g., order is independently appealable under NRAP 3A(b)):

9 N/A  
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**VERIFICATION**

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

DATED this 20<sup>th</sup> day of December, 2018. Respectfully Submitted by:

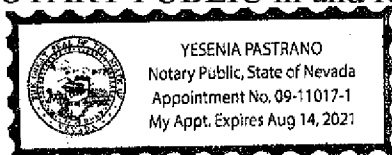
**PIROOZI LAW GROUP, PLLC.**

*Amir M. Piroozi*  
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LAS VEGAS, NV 89101  
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EMAIL: [apiroozi@piroozilawgroup.com](mailto:apiroozi@piroozilawgroup.com)  
*Attorney for Appellant, Ignacio Avila,*  
*Jr.*

Subscribed and sworn to before me  
this 20<sup>th</sup> day of December, 2018.

*Yesenia Pastrano*

NOTARY PUBLIC in and for said Court



**CERTIFICATE OF MAILING**

I, the undersigned, hereby certify that I am a resident of the County of Clark, State of Nevada, am over the age of eighteen (18) years, and not a party to this action. My business address is The Piroozi Law Group, 509 South Sixth Street, Las Vegas, Nevada 89101.

That on the 20<sup>th</sup> day of December, 2018, I served the attached **Docketing Statement**, on the parties in this action or proceeding, by placing a true and correct copy thereof, enclosed in a sealed envelope, as follows:

**STEVEN L. YARMY, ESQ.**  
7454 West Sahara Avenue  
Las Vegas, Nevada 89117  
*Attorney for Third Party Respondent, Henry Oliva.*

**HENRY OLIVA**  
5729 Awakening Street  
North Las Vegas, Nevada 89081  
*Third Party Respondent, Henry Oliva.*

**ROSIE MARTINEZ**  
5005 Losee Road, Apt 3019  
North Las Vegas, Nevada 89081  
*Respondent.*

**ROSIE MARTINEZ**  
5729 Awakening Street  
North Las Vegas, Nevada 89081  
*Third Party Respondent, Henry Oliva.*

  
An employee of Piroozi Law Group, PLLC.