

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4 **IGNACIO C. AVILA, JR.,**

5 Appellant,

6 vs.

7 **ROSIE ELENA MARTINEZ; AND**

8 **HENRY OLIVA,**

9 Respondents.

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Dec 03 2019 04:02 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No. 77242
District Court No. D-15-515892-C

10 **MOTION TO EXPEDITE A RULING ON APPEAL**

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13 COMES NOW, IGNACIO C. AVILA, JR., by and through his attorney,
14 Arezou H. Piroozi, Esq., and respectfully submits the following Motion to Expedite
15 a Ruling on Appeal.

16 **RELIEF SOUGHT**

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18 Appellant (“Mr. Avila”) respectfully requests that this Honorable Court
19 suspend all applicable Rules of Appellate Procedure pursuant to NRAP 2 in order
20 to either immediately assign this appeal to a panel with instructions to expeditiously
21 rule on the appeal or in the alternative, issue a summary reversal in which this Court
22 instructs the lower court to not only hold an evidentiary hearing in an expeditious
23 fashion but also instructs the lower court to compel the parties to submit to a
24 paternity test.
25

INTRODUCTION

This case is unique in that Mr. Avila has essentially, as a result of the reversible errors committed below,¹ had his parental rights improperly terminated, and thus every single day that passes; he is being deprived of a relationship with his own son, a deprivation which is in of itself constitutes irreparable harm. After all, Mr. Avila will never be able to make up for the time lost with his son. Time which Mr. Avila is being deprived of each and every day that this appeal is pending.

The simple fact of the matter is that Mr. Avila is the biological father of Alan Oliva, born on October 18, 2011, age 8.² A fact which was hidden from Mr. Avila by way of the affirmative misrepresentations of the Respondents. Not only did the Respondents lead Mr. Avila to believe that he was not Alan's father, but they even went as far as providing Mr. Avila with false DNA test results in an effort to perpetrate such a fraud. Worse yet, the Respondents have completely deprived Mr. Avila of access to his son, and continue to do so still to this day as a result of the erroneous ruling below. A ruling which the Court made even after conceding that Mr. Avila was, in fact, Alan's father³, and conceding the fact that Respondent Olivia

¹ Errors which the Respondents concede occurred when they failed to file an answering brief.

² The lower court itself conceded that much. See AA 107.

³ AA 107

1 committed fraud by proving false DNA test results to Mr. Avila that stated
2 otherwise.⁴

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4 Accordingly, this Court should grant the instant motion forthwith.

5 **ARGUMENT**

6 NRAP 2 provides that “On the court’s own or a party’s motion, the court may
7 — to expedite its decision or for other good cause — suspend any provision of these
8 Rules in a particular case and order proceedings as the court directs, except as
9 otherwise provided in Rule 26(b).” Furthermore, Nevada’s appellate courts are
10 committed to the proposition that “justice delayed is justice denied.” *Dougan v.*
11 *Gustaveson*, 108 Nev. 517, 523, 835 P.2d 795, 799 (1992).
12

13
14 It is the Nevada Supreme Court’s goal to “assure that cases involving child
15 custody and visitation issues are resolved in a fair, yet expedited manner.” See
16 ADKT 381, “In the Matter of Amendments to the Nevada Rules of Appellate
17 Procedure” (April 7, 2006).
18

19 In fact, delay, according to the Supreme Court, “has a particularly
20 burdensome effect on cases involving child custody and child visitation because
21 delay deprives the subject children of certainty and stability in their living situations
22 and may result in a detrimental impact on their emotional well-being.” *Id.*
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⁴ AA 128-129

1 Here good cause exists to expedite a ruling on this appeal for two reasons. First, the
2 Respondents failed to file an answering brief and such a failure should be taken as
3 a confession of error. See *Las Vegas Sun, Inc. v. Nelson*, 96 Nev. 825, 619 P.2d 534
4 (1980). *Knapp v. Lemieux*, 634 P.2d 454, 454 (Nev. 1981). Therefore, a summary
5 reversal with instructions to the lower court to hold an evidentiary hearing is
6 warranted.
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9 Second, and most importantly, Mr. Avila is being completely deprived of
10 access to his biological child. And yet, there is no disputing that a father has a
11 fundamental constitutional right to be involved in his own child's life. See *Roberts*
12 *v. U.S. Jaycees*, 468 U.S. 609, 618, 104 S. Ct. 3244 (1984).
13

14 Likewise, Mr. Avila lack of involvement in his son's life is not because of
15 anything that can be attributed to him. But rather is due to the nefarious and
16 fraudulent actions of the Respondents. If there was a case in which the proposition
17 "*justice delayed is justice denied*" applied it would be here. After all, each day that
18 passes without a ruling on this appeal, is a day that Mr. Avila will never get back
19 with his son.
20

21 Accordingly, Mr. Avila prays that this Court will grant the instant motion.
22

23 **CONCLUSION**

24 For the foregoing reasons Mr. Avila prays that this Court will grant the instant
25 motion and either immediately assign this appeal to a panel with instructions to

1 expeditiously rule on the appeal. Or in the alternative, issue a summary reversal in
2 which this Court instructs the lower court to not only hold an evidentiary hearing in
3 an expeditious fashion, but also instruct the lower court to compel the parties to
4 submit to a paternity test.
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6 Dated this 3rd day of December, 2019.

Respectfully submitted by,

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