

Exhibit 2

Exhibit 2

**CARUCCI
& ASSOCIATES**
ATTORNEYS AT LAW

Rod Carucci <rod@nvlitigators.com>

15-CV-00418 Monahan v Hogan/King

Debbie Gilmore <dgilmore@lyon-county.org>

Mon, Mar 4, 2019 at 3:22 PM

To: Rod Carucci <rod@nvlitigators.com>, LeAnn Schumann <lschumann@johnstonlawoffices.co>

Mr. Carucci:

Regarding the primary physical custody: Judge requested a proposed primary visitation schedule and he has not received that at this point. We can address this issue as well at the Motion Hearing we are setting.

Mr. Carucci is unavailable for any of the previous dates suggested so here are some other options:

April 17
April 18
April 26 @ 10:30 AM
May 7 @ 1:30 PM
May 15
May 17
May 30 @ 1:30 PM
June 6
June 7

Thank you,
Debbie

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Exhibit 1

Exhibit 1

Case No.: 15-CV-00418

Dept. No.: II

FILED

2019 MAR -1 PM 1:15

TANYA SCHEINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

ANDREA ANDERSEN
CLERK

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF LYON

ANTHONY JACOB MONAHAN,

Plaintiff,

v.

AMANDA KAITLYN HOGAN fka,
AMANDA KAITLYN KING,

Defendant.

ORDER

On October 26, 2015, the Court issued a Stipulation and Order Regarding Child Custody, Support and Visitation. On August 29, 2018, Defendant, hereinafter referred to as the "Mother," in the above matter filed a Motion to Modify Custody. The Court held a hearing on the Motion on December 27, 2018. Plaintiff, hereinafter referred to as the "Father," was represented by LEANN SCHUMANN ESQ. and Defendant was represented by RODRIC A. CARRUCCI ESQ. At the hearing the Court heard testimony and evidence from both sides, and ordered the attorneys to submit briefs on the issue of de facto change of custody. There is one (1) child subject to this action, MALAKAI MONAHAN (DOB: 07/18/2012) hereinafter referred to as the "Child."

FINDINGS OF FACT

Counsel addressed their concerns with the domestic violence issue. Court finds there was no domestic violence and there is no presumption under NRS 125C.0035.

1 The Parties altered the joint custody arrangement established in the October 26, 2015
2 order. The Father began working out of Yerington. Most recently he was living and working in
3 Winnemucca. His recent return to live and work in Yerington appears to the Court as a pretext
4 to keep the Mother from gaining a court order that establishes primary custody in her favor. The
5 Court did not find his testimony credible that he would continue to work in Yerington.

6 The Father's family provided care for the Child as the Father was out of town. The Child
7 has strong ties to his paternal relatives. The Court was impressed by the amount of care and love
8 provided by the paternal relatives.

9 Father was aware and did not object to the Mother relocating to Fallon until she filed the
10 instant motion. Mother drove the Child to Yerington so he could attend school. She also was
11 able to procure work in Yerington. Mother has now remarried and her new husband works at the
12 Fallon Naval Air Station. His commitment requires that he live in a certain area because he is
13 subject to being called out. He may relocate in several years.

14 FINDINGS OF LAW

15 NRS 125C.0035 (4) states:

16 In determining the best interest of the child, the court shall consider and set forth
17 its specific findings concerning, among other things:

18 (a) The wishes of the child if the child is of sufficient age and capacity to
19 form an intelligent preference as to his or her physical custody.

20 (b) Any nomination of a guardian for the child by a parent.

21 (c) Which parent is more likely to allow the child to have frequent
22 associations and a continuing relationship with the noncustodial parent.

23 (d) The level of conflict between the parents.

24 (e) The ability of the parents to cooperate to meet the needs of the child.

25 (f) The mental and physical health of the parents.

26 (g) The physical, developmental and emotional needs of the child.

27 (h) The nature of the relationship of the child with each parent.

28 (i) The ability of the child to maintain a relationship with any sibling.

(j) Any history of parental abuse or neglect of the child or a sibling of the
child.

(k) Whether either parent or any other person seeking physical custody has
engaged in an act of domestic violence against the child, a parent of the child or
any other person residing with the child.

(l) Whether either parent or any other person seeking physical custody has
committed any act of abduction against the child or any other child.

1 In *Potter v. Potter*, the Nevada Supreme Court held that a district court in determining
2 whether relocation should be permitted may consider "whether one parent had de facto primary
3 custody of the child prior to the motion." 121 Nev. 613, 618 (2005). The Court found no case
4 law overruling this holding after the passage of NRS 125C.006, 125C.0065, 125C.007 and
5 125C.0035.

6 The Court also found no case law regarding the necessity of any consent being in writing
7 other than to avoid possible criminal consequences under NRS 200.359. The Court found no case
8 law as to whether implied consent can exist under the analysis NRS 125C.006, 125C.0065, and
9 125C.007 require.

10 NRS 125C.006 states:

11 1. If primary physical custody has been established pursuant to an order,
12 judgment or decree of a court and the custodial parent intends to relocate his or
13 her residence to a place outside of this State or to a place within this State that is
14 at such a distance that would substantially impair the ability of the other parent to
15 maintain a meaningful relationship with the child, and the custodial parent desires
16 to take the child with him or her, the custodial parent shall, before relocating:

17 (a) Attempt to obtain the written consent of the noncustodial parent to
18 relocate with the child; and

19 (b) If the noncustodial parent refuses to give that consent, petition the court
20 for permission to relocate with the child.

21 2. The court may award reasonable attorney's fees and costs to the custodial
22 parent if the court finds that the noncustodial parent refused to consent to the
23 custodial parent's relocation with the child:

24 (a) Without having reasonable grounds for such refusal; or

25 (b) For the purpose of harassing the custodial parent.

26 3. A parent who relocates with a child pursuant to this section without the
27 written consent of the noncustodial parent or the permission of the court is subject
28 to the provisions of NRS 200.359.

NRS 125C.0065 states:

1. If joint physical custody has been established pursuant to an order,
judgment or decree of a court and one parent intends to relocate his or her
residence to a place outside of this State or to a place within this State that is at
such a distance that would substantially impair the ability of the other parent to
maintain a meaningful relationship with the child, and the relocating parent
desires to take the child with him or her, the relocating parent shall, before
relocating:

(a) Attempt to obtain the written consent of the non-relocating parent to
relocate with the child; and

(b) If the non-relocating parent refuses to give that consent, petition the court
for primary physical custody for the purpose of relocating.

2. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child:

- (a) Without having reasonable grounds for such refusal; or
- (b) For the purpose of harassing the relocating parent.

3. A parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical custody of the child and permission to relocate with the child is subject to the provisions of NRS 200.359.

NRS 125C.007 states:

1. In every instance of a petition for permission to relocate with a child that is filed pursuant to NRS 125C.006 or 125C.0065, the relocating parent must demonstrate to the court that:

- (a) There exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent of his or her parenting time;
- (b) The best interests of the child are served by allowing the relocating parent to relocate with the child; and
- (c) The child and the relocating parent will benefit from an actual advantage as a result of the relocation.

2. If a relocating parent demonstrates to the court the provisions set forth in subsection 1, the court must then weigh the following factors and the impact of each on the child, the relocating parent and the non-relocating parent, including, without limitation, the extent to which the compelling interests of the child, the relocating parent and the non-relocating parent are accommodated:

- (a) The extent to which the relocation is likely to improve the quality of life for the child and the relocating parent;
- (b) Whether the motives of the relocating parent are honorable and not designed to frustrate or defeat any visitation rights accorded to the non-relocating parent;
- (c) Whether the relocating parent will comply with any substitute visitation orders issued by the court if permission to relocate is granted;
- (d) Whether the motives of the non-relocating parent are honorable in resisting the petition for permission to relocate or to what extent any opposition to the petition for permission to relocate is intended to secure a financial advantage in the form of ongoing support obligations or otherwise;
- (e) Whether there will be a realistic opportunity for the non-relocating parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship between the child and the non-relocating parent if permission to relocate is granted; and
- (f) Any other factor necessary to assist the court in determining whether to grant permission to relocate.

3. A parent who desires to relocate with a child pursuant to NRS 125C.006 or 125C.0065 has the burden of proving that relocating with the child is in the best interest of the child.

Conclusions of Law

1 The Court concludes that the Mother had de facto primary custody of the Child. The de
2 facto custody agreement is in the best interests of the Child. Pursuant to NRS 125C.0035, the
3 Court concludes:

4 (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent
5 preference as to his or her physical custody.

6 The factor was not argued. However, the Child is not of a sufficient age based upon his
7 birthdate.

8 (b) Any nomination of a guardian for the child by a parent.

9 Not applicable.

10 (c) Which parent is more likely to allow the child to have frequent associations and a continuing
11 relationship with the noncustodial parent.

12 This factor favors the Mother as the Father had moved from Yerington to work and spent
13 two thirds of his time in Winnemucca. The Mother continued to bring the Child to Yerington
14 despite the fact that the Father was not present and was in Winnemucca.

15 (d) The level of conflict between the parents.

16 This factor does not favor either Party. Both do not care for each other. The Court
17 cannot find that the conflict originates from one Party.

18 (e) The ability of the parents to cooperate to meet the needs of the child.

19 The Father tends to focus on his work and relies upon others to provide care for the
20 Child. The Mother has difficulty cooperating with the other care givers. This factor favors
21 neither Party.

22 (f) The mental and physical health of the parents.

23 Both parents seem to be emotionally immature, but neither showed any psychological or
24 physical handicaps that would prevent them from parenting. This factor favors neither Party.

25 (g) The physical, developmental and emotional needs of the child.

1 This factor favors Mother as Father relies upon others to care for the Child.

2 (h) The nature of the relationship of the child with each parent.

3 The Child has a good relationship with both Parties. However, this factor favors Mother
4 as the Father relies upon others to care for the Child.

5 (i) The ability of the child to maintain a relationship with any sibling.

6 This factor does not apply in the strict sense of the statute. If it were to apply to relatives
7 and step-siblings, then it would favor the Father.

8 (j) Any history of parental abuse or neglect of the child or a sibling of the child.

9 Not applicable.

10 (k) Whether either parent or any other person seeking physical custody has engaged in an act of
11 domestic violence against the child, a parent of the child or any other person residing with the
12 child.

13 Not applicable.

14 (l) Whether either parent or any other person seeking physical custody has committed any act of
15 abduction against the child or any other child.

16 Not applicable.

17 The Court also concludes that the Father was aware of the Mother's relocation and gave
18 implied consent to the relocation, although not in writing. The Father's real issues in this case
19 are that the relocation interferes with his relatives' relationship with the Child and that in the
20 future the Mother may wish to relocate out of state. The Parties did not litigate the school issue.

21 If NRS 125C.006 and 125C.0065 did apply, the Court concludes that the relocation
22 complies with the applicable statutes. The Mother presented evidence that the relocation situs
23 will not substantially impair the ability of the Father to maintain a meaningful relationship with
24 the Child based upon the de facto custody arrangement in place at the time of the relocation.
25 Father can exercise visitation as the relocation situs is only one hour away from Yerington and
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1 three hours from Winnemucca. The Court can fashion a new schedule that provides for weekend
2 and summer visitation.

3 The Court appreciated the evidence that Father's counsel put on regarding the impact the
4 relocation has on the paternal relatives. However, the statute only speaks to a relocation
5 impacting a parent's relationship. A finding of an impact to a parent's relationship triggers the
6 requirement to file for permission to relocate and for a court to engage in an analysis under
7 125C.007. Without a finding of an impact to the parent, the Court does not enter into a best
8 interests' analysis under 125C.007.

9 Furthermore, if the Court is in error as to the relocation analysis, the Mother has
10 established she is in compliance with NRS 125C.007. She met her burden under both subsections
11 (1) and (2).

12 Pursuant to subsection (a), the Court concludes that the Mother had a good faith basis.
13 She has a new relationship. Her new husband works in Fallon. He provides income to maintain
14 a stable relationship.

15 Pursuant to subsection (b), the Court concludes that the relocation is in the best interests
16 of the Child. The Father had been previously awarded joint custody and consented to the Mother
17 exercising primary custody. As between the Child's parents, the Mother has demonstrated that
18 she cares for the Child the majority of the time. She tends to the Child's educational needs.
19 Father has used relatives to care for the Child in lieu of performing them himself. Relocation
20 provides her more time to spend with the Child and less time for the Child to be cared for by
21 relatives or others.

22 The Court recognizes that this does not make the Father a bad person. The Court also
23 recognizes that the Child benefits from having an active extended family. However, the
24 applicable statutes and Nevada case law do not support denial of relocation on the basis that the
25 extended family provides support for a child. There was absolutely no showing that the Mother
26 is unfit.

1 Pursuant to subsection (c), the Court concludes that the Child and Mother will benefit.
2 The Mother can either take classes or find work in Fallon. The Child will not have to commute
3 two hours a day. The Child will have more time with his Mother while not being in a vehicle.

4 As to the factors in subsection (2) the Court concludes:

5 (a) The extent to which the relocation is likely to improve the quality of life for
6 the child and the relocating parent;

7 As stated above, both the Mother and Child will spend less time in a vehicle. The City of
8 Fallon offers the Mother working and educational opportunities. The Mother will have
9 additional time to spend with her new husband.

10 The Child will have the same educational opportunities. The Mother will have more time
11 to engage in extracurricular opportunities with the Child.

12 (b) Whether the motives of the relocating parent are honorable and not designed
13 to frustrate or defeat any visitation rights accorded to the non-relocating parent;

14 As stated above, the Mother had honorable motives. Mother continued to bring the Child
15 to the same school after relocating. Mother took no action to prevent the paternal relatives from
16 seeing the Child. The Court found no evidence that the Mother sought to frustrate the Father
17 from having a relationship with the Child.

18 (c) Whether the relocating parent will comply with any substitute visitation
19 orders issued by the court if permission to relocate is granted;

20 The Court found no credible evidence that the Mother would refuse to follow any
21 subsequent order this Court may issue to establish a visitation order.

22 (d) Whether the motives of the non-relocating parent are honorable in resisting
23 the petition for permission to relocate or to what extent any opposition to the
24 petition for permission to relocate is intended to secure a financial advantage in
25 the form of ongoing support obligations or otherwise;

26 The Father's motives are honorable. His family clearly loves the Child deeply. The
27 Court believes that the origins of any dispute arise from the fact that the relocation will impact
28 the paternal relatives' relationship with the Child. The Father appears to the Court as fighting
the relocation as he does not desire to see those relationships impacted.

(e) Whether there will be a realistic opportunity for the non-relocating parent to
maintain a visitation schedule that will adequately foster and preserve the parental

1 relationship between the child and the non-relocating parent if permission to
2 relocate is granted;

3 As state above, the Court concludes that it can create a visitation schedule that will
4 adequately foster and preserve the parental relationship. The Court agrees with Father that the
5 Court cannot create a visitation schedule that will preserve relationship the Child now maintains
6 with the paternal relatives.

7 (f) Any other factor necessary to assist the court in determining whether to grant
8 permission to relocate.

9 The Father invited the Court to speculate as to whether the Mother's relationship would
10 last long and whether the Mother was seeking to establish an advantage should she seek to
11 relocate out of state in the future if her new husband was relocated. The Court did not accept the
12 invitation.

13 Based upon the above and good cause appearing, the Court hereby **ADJUDGES and**
14 **ORDERS** as follows:

- 15 1. The Mother was not required to seek permission to relocate pursuant to either
16 NRS 125C.006 or 125C.0065.
- 17 2. The Mother has met her burden of proof under NRS 125C.007 to relocate.
- 18 3. The Parties shall meet and confer regarding a visitation schedule. In the event no
19 agreement can be reached, either party shall request a hearing.
- 20 4. The Child shall finish the school year in his current school.

21 DATED: This 20th day of February, 2019.

22 
23 Hon. LEON ABERASTURI
24 DISTRICT JUDGE
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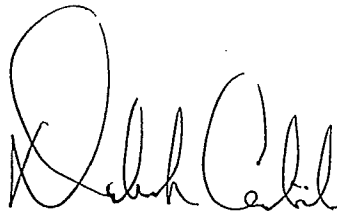
Certificate of Mailing

I hereby certify that I, Deborah Carlisle, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Johnston Law Offices, P.C.
LeAnn Schumann, Esq.
Deposited in the TJDC mailbox

Roderic A. Carucci, Esq.
Carucci and Associates
702 Plumas Street
Reno, NV 89509

DATED: This 1st day of March, 2019.



Electronically Filed
Apr 09 2019 04:37 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY JACOB MONAHAN,

Appellant,

CASE NO. 78489

v.

AMANDA KAITLYN HOGAN, fka
AMANDA KAITLYN KING,,

Respondent.

MOTION TO DISMISS APPEAL

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Counsel for Respondent

NOTICE OF MOTION

Respondent, Amanda Hogan ("Mother"), the defendant below, moves this honorable Court to dismiss the appeal filed by Anthony Jacob Monahan ("Father"), the plaintiff below, on or about March 29, 2019, in the Third Judicial District Court in and for the County of Lyon, Hon. Leon Aburasturi, presiding. This motion is made and based upon NRAP 3A as the District Court has not yet entered a final order in this custodial matter. The Order entered and appealed from was an interim order that did not make a final determination of child custody, visitation or child support.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Background

The parties were never married. The parties have one minor child the issue of their relationship: Malakai Jaco Monahan, born July 18, 2012. Nevada is the home state and habitual residence of the minor child.

A temporary "Order After June 19, 2015 Hearing" awarded Amanda Hogan ("Mother") temporary primary physical custody because the Court had concerns that Anthony Monahan ("Father"): "had committed domestic violence", "may have an alcohol issue", and "may have a tendency towards violence." The next custodial order was entered on October 26, 2015, by stipulation at a Settlement Conference. That Order awarded the parties joint legal and joint physical custody conditioned upon Father completing 26 Anger Management classes and an Anger Management Evaluation. Father completed these conditions in December, 2015. Joint legal and joint physical custody was the order of the Court until the most recent custodial Order entered on March 1, 2019 (Exhibit 1 attached and incorporated herein by reference), after a hearing held on December 27, 2018. Despite a gross disparity in the incomes of the parties, child support has not been addressed

1 by the Court.

2 Based upon numerous changes in circumstance and the best interests
3 of the minor child, Mother filed a "Motion to Modify Custody Based Upon
4 Status Quo" on August 29, 2018. As stated above, an evidentiary hearing
5 was held on December 27, 2018 and the Court entered its Order on March 1,
6 2019, after briefing of post trial issues by counsel for the parties.

7 Mother's motion to modify custody was based upon numerous factors
8 affecting the minor child's best interests:

9 1. Mother had been exercising de facto primary physical custody for
10 more approximately one year based upon Father's numerous job changes and
11 his employment by a mining company in Winnemucca, more than 150 miles
12 from Yerington: where Father was supposed to be exercising custody and
13 where the minor child attended school.

14 2. Mother had recently married Brandon Hogan, a pilot in the
15 United States Navy, who is currently stationed in Fallon, Nevada, as a Top
16 Gun flight instructor. Mother now resides in Fallon, Churchill County,
17 Nevada, with her new husband. Mother's new husband has to be located
18 near the Fallon Naval Air Station where he can be on call.

19 3. Mother maintained a log of Father's visitation time exercised
20 since December, 2017, which was admitted into evidence. For the 9 months
21 from December, 2017 through August, 2018, the date of Mother's motion,
22 Father had the child for a total of 74 days, or 27% of the time as set forth
23 below:

24	December, 2017	8 days
	January, 2018	7 days
25	February, 2018	4 days
	March, 2018	6 days
26	April, 2018	11 days
	May, 2018	6 days
27	June, 2018	11 days
	July, 2018	12 days
28	August, 2018	9 days

1 TOTAL

74 DAYS / 274 DAYS = 27%

2
3 4. Father resides with his girlfriend, Samantha Morrison. Mother
4 had previously obtained two TPOs against Samantha Morrison based upon
5 assaults and stalking in 2015 and 2016.

6 5. Despite Mother exercising de facto primary physical custody, the
7 child continued to attend 1st grade in Yerington Elementary School. Mother
8 estimates that it is about 65 miles each way to deliver Malakai to school each
9 day; 130 miles round trip. This creates a time and monetary hardship for
10 Mother as Father provides no support for his child. The hardship is
11 exacerbated by the fact that Mother had the child 73% of the time.

12 **A Final Order has Not Been Entered by the District Court**

13 Mother filed a motion to modify custody based upon the status quo as
14 she had custody of the minor child for 73% of the time in the 9 months prior
15 to filing her motion on August 29, 2018. As the parties resided 65 miles
16 apart the relocation statutes were inapplicable as Mother's move to Fallon
17 from Yerington was not "at such a distance that would substantially impair
18 the ability of the other parent to maintain a meaningful relationship with the
19 child." NRS 125C.0065. Mother was living in Fallon in 2018 and doing
20 so during most of the period that she had the child for 73% of the time.
21 Mother transported the child to school in Yerington every day and she
22 maintained employment in Yerington until such time as she was able to gain
23 approval from the Court recognizing her as the primary physical custodian
24 and allowing her to enroll the child in the Churchill County School District.

25 Father opposed Mother's motion and belatedly raised a removal statute
26 defense in one paragraph at page 8 of his opposition.

27 At the conclusion of the evidentiary hearing on December 27, 2018, the
28

1 Court directed counsel for the parties to submit briefs on two issues: (1) the
2 applicability of the removal statute as the parties live slightly over an hour
3 apart (65 miles); and (2) argument regarding when a change in circumstance
4 becomes applicable. The latter issue arose because Father claimed, for the
5 first time on the witness stand at trial on December 27, 2018, that he had
6 just changed jobs and accepted employment in Yerington. Father presented
7 no documentation to support this untimely assertion. When queried under
8 oath about the identity of this purported new employer, Husband provided
9 the name of a company that, it turns out, does not even have a telephone or
10 internet listing.

11 After the evidentiary hearing, the Court's March 1, 2019 Order
12 disposed of the removal argument in two ways: (1) finding that the removal
13 statute was inapplicable in this case given the proximity of the parties, and
14 (2) in the alternative, finding that Mother met her statutory burden for
15 removal with the child to Fallon, Nevada.

16 The Court also concluded as a matter of law that "Mother had de facto
17 primary custody of the Child. The de facto custody agreement is in the best
18 interests of the Child." [Exhibit 1 Order, page 5, line 1] "The Court also
19 concludes that the Father was aware of the Mother's relocation and gave
20 implied consent to the relocation, although not in writing." [Exhibit 1 Order,
21 page 6, line 19].

22 Mother has not changed the child's enrollment; the child still attends
23 school in Yerington (Lyon County) through the date of this writing.
24 Throughout this proceeding the child has resided primarily with Mother
25 during her custodial time and there was no evidence or testimony that
26 Father's visitation was impeded in any way. It can reasonably be concluded
27 based upon such conduct, that Father's visitation would similarly not be
28 impeded if the child were enrolled in school in Churchill County. The child

1 already lives with Mother in Churchill County during her custodial time.,

2 “The Mother presented evidence that the reloca-
3 tion situs will not substantially impair the ability of
4 the Father to maintain a meaningful relationship with
5 the Child based upon the de facto custody arrange-
6 ment in place at the time of the relocation. Father
7 can exercise visitation as the relocation situs is only
8 one hour away from Yerington and three hours from
9 Winnemucca. The Court can fashion a new schedule
10 that provides for weekend and summer visitation.”
11 [Exhibit 1 Order, page 6, line 24]

12 “... the Court concludes that the relocation is in
13 the best interests of the Child. The Father has been
14 previously awarded joint custody and consented to the
15 Mother exercising primary custody.”
16 [Exhibit 1 Order, page 7, line 15]

17 The Court proceeded to analyze the custodial factors set forth in NRS
18 125C.0035 and concluded that the balancing of these factors weighed in favor
19 of Mother continuing to exercise primary physical custody. The Court clearly
20 recognized and ratified the status quo, contemplating an award of primary
21 physical custody to Mother: “the Court can fashion a new schedule that
22 provides for weekend and summer visitation” for Father.

23 However, the Court’s Order *does not* specifically address physical
24 custody of the child. The March 1, 2019, Order does not provide a specific
25 visitation schedule as required by NRS 125.010. The Order does not address
26 the incomes of the parties or address child support: even if the issue of child
27 support were to be referred to a support Master, the Court must still make
28 a determination as to which parent owes child support to the other and the
percentage of gross income owed as payment for child support. None of this
is included in the Court’s Order *because the Court intended for the
parties to conduct a further hearing prior to entering a final order.*

3. The Parties shall meet and confer regarding a
visitation schedule. In the event no agreement can be
reached, either party shall request a hearing. [Ex-
hibit 1: Order page 9, line 16]

1 A hearing is calendared for April 17, 2019 on Mother's Order to Show
2 Cause for Father's repeated failure and refusal to file a financial declaration
3 as required by NRCP 16.295 and local rule, TJDRCR 6(H). An email sent by
4 the Judge's administrative assistant, to counsel for both parties on March 4,
5 2019, (while attempting to set a date for a contempt hearing) stated the
6 following:

7 "Regarding the primary physical custody: Judge
8 requested a proposed primary visitation schedule and
9 he has not received that at this point. We can address
10 this issue as well at the Motion Hearing we are set-
11 ting." [Exhibit 2 attached and incorporated herein by
12 reference]

13 Based upon the above email which was sent after the Court's Order was
14 entered, one must conclude that the District Court did not contemplate that
15 the March 1, 2019, Order was a final order in this matter.

16 Under NRAP 3A(b)(1), an order is appealable as final
17 when it "disposes of all the issues presented in the
18 case, and leaves nothing for the future consideration
19 of the court, except for post-judgment issues such as
20 attorney's fees and costs." *Lee v. GNLV Corp.*, 116
21 Nev. 424, 426, 996 P.2d 416, 417 (2000).
22 *Wykoff Newberg Corp. v. State, Dep't of Transp.*, 413 P.3d 837 (Nev.
23 2018)

24 Judge Aberasturi intentionally refrained from entering a final order
25 regarding primary custody and visitation, presumably in the hope that any
26 schedule fashioned by the parties might be preferable to one generated by
27 the Court. The Order did allow Mother to enroll the child in the Churchill
28 County Schools after the conclusion of the current school year: "The child
shall finish the school year in his current school."

29 CONCLUSION

30 The Court has not entered a final order resolving Mother's motion to
31 modify child custody. While the Court's dicta and conclusions of law clearly

1 evidence that Mother will be awarded primary custody of the party's child
2 based upon the status quo, the Court intentionally refrained from incorporat-
3 ing such a finding in its Order. The Court also refrained from entering a
4 visitation schedule or findings regarding child support, with the intention
5 that the parties would establish a mutually agreed upon visitation schedule
6 or that the Court would enter one for them if they could not agree.

7 This is a frivolous appeal which should be dismissed for failure to
8 comply with NRAP 3A, and sanctions should be awarded pursuant to NRAP
9 38 and NRS 18.010(2)(b).

10
11 **AFFIRMATION PURSUANT TO NRS 239B.030**

12 The undersigned hereby affirms this document does not contain a social
13 security number pursuant to NRS 239B.030.

14 DATED: April 8, 2019

15 Carucci and Associates
16 702 Plumas Street
17 Reno, Nevada 89509
18 775-323-0400

19 By: 

Roderic A. Carucci, Esq.
Kelly A. VandeBurgt, Esq.
Attorneys for Amanda Hogan

ATTORNEY'S CERTIFICATE OF COMPLIANCE (NRAP 28.2)

1. I hereby certify that this motion complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this pleading has been prepared in a proportionally spaced typeface using MS Word in 14 point type and Century Schoolbook type style.

2. I further certify that this pleading complies with the page or type volume limitations of NRAP 27 because it is proportionately spaced, has a typeface of 14 points or more, contains 1936 words, and does not exceed 10 pages.

3. Finally, I hereby certify that I have read this appellate pleading, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this motion complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: April 8, 2019

Carucci and Associates
702 Plumas Street
Reno, Nevada 89509
775-323-0400

By:


Roderic A. Carucci, Esq. (#4233)
Counsel for Respondent
Amanda Hogan

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCF 5(b) and NRAF 25, I certify that I am an employee
3 of Carucci and Associates and on April 8, 2019, I served a true and correct
4 copy of:

5 **Motion to Dismiss Appeal**

6 by:

7 _____ Placing an original or true copy thereof in a sealed envelope, postage
8 prepaid for collection and mailing in the United States Mail at Reno,
9 Nevada

10 _____ Personal Delivery

11 _____ Facsimile to the following number: _____

12 _____ Reno Carson Messenger Service

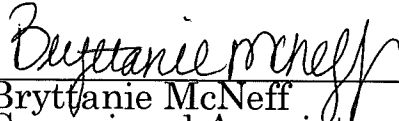
13 _____ Certified Mail, Return Receipt Requested

14 X E-Flex filing system

15 X Electronic mail addressed to: aaronbushurlaw@yahoo.com

16 addressed to:

17 Aaron Bushur, Esq.
18 316 California Avenue, #256
Reno, Nevada 89509

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EXHIBIT INDEX
Monahan v. Hogan

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2	Email Re Hearing Dates	1