

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN DANIEL ADRIANZEN,

Appellant,

v.

PAIGE ELIZABETH PETIT,

Respondent.

Electronically Filed
Jul 22 2019 02:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.: 78966

District Court No.: D489542

APPELLANT'S MOTION FOR REMAND FOR LIMITED PURPOSE

COMES NOW, Appellant, Kevin Adrianzen, by and through his attorney, Michael Burton, Esq. of McFarling Law Group, and hereby requests and Order that the matter be remanded to the District Court for Limited Purpose. This Motion is based upon the Memorandum of Points and Authorities, Declaration of Michael Burton, Esq., and all other papers and pleadings on file herein.

DATED this 22nd day of July, 2019.

MCFARLING LAW GROUP

/s/Michael Burton

Michael Burton, Esq.
Nevada Bar Number 14351
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
*Attorney for Appellant,
Kevin Adrianzen*

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

Appellant Kevin Adrianzen (“Dad”) and Respondent Paige Petit (“Mom”) have one child together: Ryder. Ryder is set to begin the first grade in the Fall of 2019. For kindergarten, Ryder attended Tanaka Elementary School. However, neither parent currently lives in the school zone for Tanaka, requiring Ryder to switch schools. The parents have been unable to agree on which school Ryder should attend in Fall 2019.

Prior to the school dispute, the parties were in court for custody modification proceedings. On July 31, 2018, Mom filed a motion to modify the parties’ timeshare. On August 23, 2018, Dad filed an Opposition and Countermotion—raising numerous concerns regarding custody. At the hearing on September 17, 2018, the district court denied both parties’ requests. The order from this hearing was entered on February 14, 2019.

On February 28, 2019, Dad filed a motion to reconsider as to the district court’s denial of Dad’s claims in his countermotion without evidentiary hearing. The district court denied Dad’s motion for reconsideration at the April 3, 2019 hearing, with the order entered on May 28, 2019. Dad filed his Notice of Appeal on June 4, 2019.

On June 11, 2019, Dad filed his motion for school choice with the district court for the reasons stated herein. The parties appeared in district court on July 10, 2019. At that hearing, the court addressed jurisdictional concerns re: the appeal¹. Both counsel stated they felt the school choice motion was collateral to the appeal as it concerns legal custody whereas the appeal concerns physical custody. The district court however stated it preferred to certify its intent to grant the requested relief and have the appellate court do a limited remand for the purposes of the school choice proceeding². The district court set an evidentiary hearing for August 5, 2019, as this matter needs to be heard and ruled upon prior to school starting on August 12, 2019.

This motion follows

II. LEGAL ARGUMENT

A. The Appellate Court Should Do a Limited Remand to the District Court for the School Choice Proceeding

Pursuant to *Huneycutt v. Huneycutt*, 94 Nev. 79, 83 (1978), the District Court can address issues following a limited remand from the Nevada Supreme Court upon the motion from a party. When a matter is on appeal and a party seeks modification or amendment of a prior order, a party must first file a motion for relief in the District

¹ See Exhibit 1 – Order from July 10, 2019, Hearing, entered July 19, 2019.

² *Id.*

Court, and then if the District Court states it is inclined to grant the requested relief, the moving party then files for remand from the appellate court for the sole purpose of granting the requested relief.³

Effective as of March 1, 2019, the Nevada Supreme Court created NRCP 62.1, which codified the *Huneycutt* procedure:

Rule 62.1. Indicative Ruling on a Motion for Relief That Is Barred by a Pending Appeal.

- (a) **Relief Pending Appeal.** If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, that court may:
 - (1) Defer considering the motion;
 - (2) Deny the motion; or
 - (3) State either that it would grant the motion if the appellate court remands for that purpose or that the motion raises a substantial issue.
- (b) **Notice to the Appellate Court.** The movant must promptly notify the clerk of the supreme court under NRAP 12A if the district court states that it would grant the motion or that the motion raises a substantial issue.
- (c) **Remand.** The district court may decide the motion if the appellate court remands for that purpose.

Here, the district court has certified its intent to grant the requested relief, which is to set an evidentiary hearing on school-choice. As the new school year is quickly approaching, it is imperative that the district court have the ability to hear and rule on this matter expeditiously. The issues on appeal concern physical custody whereas the school-choice proceedings concern legal custody. However, out of an

³ See *Huneycutt*, 94 Nev. 79 at 83.

abundance of caution, the district court has reserved judgment as to whether the current issues are collateral to the appeal, instead issuing its intent to grant the requested relief once the matter is remanded back for this limited purpose. The district court set an evidentiary hearing for August 5, 2019 as this matter has to be ruled upon by August 12, 2019—therefore timing is extremely important as the child is without a school.

IV. CONCLUSION

Based on the foregoing, the Court should remand this matter back to the district court for the limited purpose of conducting an evidentiary hearing on school choice.

DATED this 22nd day of July, 2019.

McFARLING LAW GROUP

/s/Michael Burton

Michael Burton, Esq.
Nevada Bar Number 14351
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
*Attorney for Appellant,
Kevin Adrianzen*

DECLARATION OF MICHAEL BURTON, ESQ.

I, Michael Burton, Esq., declare under penalty of perjury under the laws of the State of Nevada that the following is true and correct:

1. I represent the Appellant in the above-entitled case.
2. I have read the attached motion and know the contents thereof; the same is true of my own knowledge, except for those matters stated upon information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 USC § 1746), that the foregoing is true and correct.

DATED this 22nd day of July, 2019.

McFARLING LAW GROUP

/s/Michael Burton

Michael Burton, Esq.
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Attorney for Appellant
Kevin Adrianzen

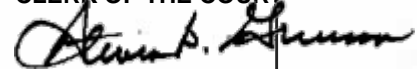
CERTIFICATE OF SERVICE

I, an employee of McFarling Law Group, hereby certify that on the 22nd day of July, 2019, I served a true and correct copy of Appellant's Motion for Remand for Limited Purpose to the following via the Supreme Court's electronic filing and service system (eFlex):

Mel Grimes, Esq.
808 South 7th Street
Las Vegas NV 89101

/s/Maria Rios Landin
Maria Rios Landin

EXHIBIT 1



1 **ORDR**

2 Michael Burton, Esq.
3 Nevada Bar Number 14351
4 **MCFARLING LAW GROUP**
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7 (702) 565-4335 phone
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9 eservice@mcfarlinglaw.com
10 Attorney for Plaintiff,
11 Kevin Adrianzen

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **FAMILY DIVISION**

9 **CLARK COUNTY, NEVADA**

10 KEVIN ADRIANZEN,
11 Plaintiff,

Case Number: D-13-489542-D
Department: H

12 vs.

13 PAIGE PETIT,
14 Defendant.

15 **ORDER FROM JULY 10, 2019 HEARING**

16 THIS MATTER came before the Honorable Judge Ritchie, on July 10, 2019 at 10:00 a.m.
17 Present at the hearing were Plaintiff, Kevin Adrianzen, represented by his attorney of record,
18 Michael Burton, Esq., and Defendant, Paige Petit, represented by her attorney of record, Melvin
19 Grimes, Esq.

20 THE COURT NOTED that Plaintiff has an appeal pending in this matter, Case No. 78966,
21 which was represented by counsel for both Plaintiff and Defendant to include issues relating only
22 to physical custody of the child.
23

✓
JUL 18 2019

1 THE COURT FURTHER NOTED that Plaintiff filed his Motion for School choice on June
2 11, 2019 with Defendant filing her Opposition on June 28, 2019.

3 THE COURT FURTHER NOTED that counsel for Plaintiff and Defendant believe the
4 issues in this motion are collateral to the pending appeal as they are legal custody issues.

5 THE COURT FURTHER NOTED that last year, the child attended Tanaka Elementary
6 school; however, neither parent currently lives in that school zone.

7 THE COURT FURTHER NOTED that Plaintiff is zoned for William Wright Elementary.

8 THE COURT FURTHER NOTED that Defendant is zoned for Mark Fine Elementary.

9 THE COURT FURTHER NOTED that the parents cannot agree as to which school serves
10 the child's best interest.

11 THE COURT FURTHER NOTED that it has tentatively set an evidentiary hearing date
12 for August 5, 2019 at 1:30 p.m. to take evidence as to which school serves the child's best interest.

13 THE COURT FURTHER NOTED that because of the pending appeal, the Court will
14 certify its intent to hear this matter out of an abundance of caution rather than presume the issues
15 on appeal are collateral or rely on representations of counsel as to the same.

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1 The Court, having reviewed the papers and pleadings on file herein, and having taken
2 argument from counsel, and being duly and fully advised in the premises, issues the following:


3 THE COURT HEREBY CERTIFIES ITS INTENT to hear this matter should the Appellate
4 court remand for the purposes of these proceedings, per *Huneycutt*.

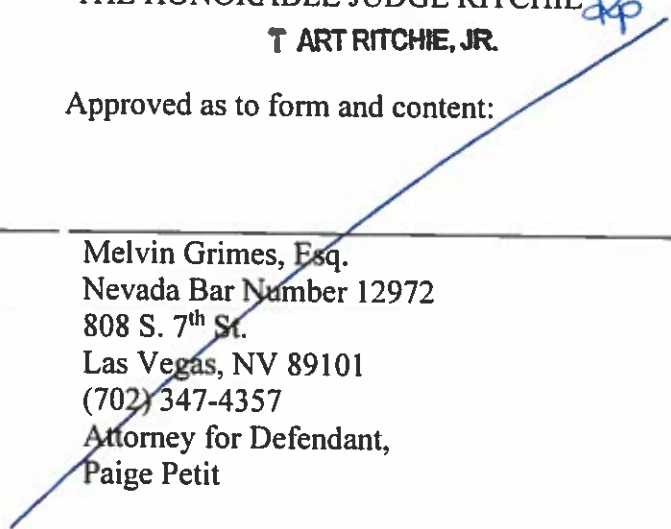
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6 ORDERED this 18 day of July, 2019.

7 
8 THE HONORABLE JUDGE RITCHIE 
T ART RITCHIE, JR.

9 Submitted by:
10 MCFARLING LAW GROUP

Approved as to form and content:

11 
12 Michael Burton, Esq.
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Kevin Adrianzen

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24