

1           IN THE SUPREME COURT OF THE STATE OF NEVADA

2       RENELYN BAUTISTA                                 }

Supreme Court No. 79534

3                                 }

4           Appellant                                 }

5       vs.                                 }

6       JAMES PICONE                                 }

7                                 }

8           Respondent                                 }

9       -----

Electronically Filed  
October 11, 2019 12:11 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

10           Respondent timely files this Reply to Response to Motion to Dismiss  
11       pursuant to NRAP 27(a)(4).

12

13       APPEALABILITY IS ASSESSED BASED UPON WHAT THE DECISION AND  
14       ORDER ACTUALLY DOES, NOT WHAT IT IS CALLED

15

16           This Court assesses appealability of the Amended Decision and Order  
17       being appealed [Exhibit B to Exhibit 1] based upon “what the order or  
18       judgment actually does, not what it is called.” *Valley Bank of Nev. v.*  
19       *Ginsburg*, 100 Nev. 440, 445, 874 P.2d 729, 733 (1994)

20           Appellant’s Response demonstrates a lack of understanding of the  
21       basis of Respondent’s pending motion. The Amended Decision and Order  
22       expressly provides for submission by both counsel of “a judgment”. [Exhibit  
23       B to Exhibit 1, 4:13] It goes on to explain that “the amount is being reduced  
24       to a judgment”. The Amended Decision and Order is clear that the judgment  
25       itself is to be forthcoming. The Amended Decision and Order itself is not a  
26       judgment.

27           Thus, appealing the Amended Decision and Order before the entry of  
28       the judgment(s) is premature because it expressly was NOT final in that

1 further actions were expected by the district court in the form of each counsel  
2 submitting a judgment.

3  
4 LEGAL BASIS FOR AWARD OF ATTORNEY FEES AND COSTS WAS  
5 CLEARLY STATED

6  
7 As to the argument raised in Appellant's Response about the standard  
8 of review of the legal basis for the award of attorney fees and costs being de  
9 nove, the district court clearly stated the legal basis in the Amended Decision  
10 and Order. First the district court reviewed the procedural history and made  
11 findings to define the prevailing party. The district court then appropriately  
12 cited to *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005) and the 4  
13 requirements contained therein. The district court then reviewed the timing  
14 and other requirements of NRCP 54(d)(2) and NRS 18.110(1). Next it cited to  
15 NRS 125C.250 and it reviewed the *Brunzell* factors specifically addressed by  
16 counsel in their respective motions. Thus, the legal basis for the Amended  
17 Decision and Order was expressly identified.

18 Finally, Respondent's judgment which was submitted as provided in  
19 the Amended Decision and Order [Exhibit 2, 1:19 - 2:2] also made reference  
20 to the legal basis set forth in the Amended Decision and Order as follows :

21  
22 Plaintiff was the prevailing party. Attorney fees are  
23 awarded under NRS 125C.250, set forth below.

24 NRS 125C.250 - Attorney's fees and costs:  
25 Except as otherwise provided in NRS 125C.0689, in  
26 an action to determine legal custody, physical  
27 custody or visitation with respect to a child, the court  
28 may order reasonable fees of counsel and experts  
and other costs of the proceeding to be paid in  
proportions and at times determined by the court.

1           This judgment is awarded after a custody trial requested  
2 by Defendant without reasonable grounds. BENJAMIN B.  
3 CHILDS was the attorney for Plaintiff JAMES PICONE during  
4 that proceeding.  
5

6           Why Appellant even raises the issue of the standard of review is a  
7 mystery, since this has nothing to do with the basis of Respondent's Motion to  
8 Dismiss. However, as set forth above, the district court clearly stated the  
9 legal basis for it's decision in the Amended Decision and Order. The cited  
10 law is well settled.  
11

12 MOTION WAS REQUIRED BY NRAP 14(f)  
13

14           Respondent's motion to dismiss was required by this specific statement  
15 in NRAP 14(f) : "If respondent believes there is a jurisdictional defect,  
16 respondent should file a motion to dismiss."

17           Appellant's flippant remark in her Response about the motion being  
18 frivolous is the proverbial pot calling the kettle black.

19           After evaluating the factors to define the prevailing party, the district  
20 court notes the following in the Amended Decision and Order.  
21

22           This Court further FINDS that Defendant did in fact maintain her  
23 claim *without reasonable grounds*. The underlying Decision and  
24 Order speaks for itself. Defendant surprisingly continued to  
25 hoodwink the Supreme Court of Nevada as the remand involved  
26 a non-existent 15 year old girl and an automobile incident  
27 involving a biased/suspect witness whereby not a scintilla of  
28 evidence was produced at the evidentiary hearing. [Exhibit B to  
Exhibit 1, 3:9-14] (emphasis in original)

As Plaintiff points out, to date Defendant still refuses to fill out her

1 household expenses. Further, the amount that she has paid her  
2 own attorney is continuously/suspiciously left blank. Yet,  
3 Defendant seems to conveniently find the funds to continue  
4 litigating/investigating this case *ad nauseam*. Therefore, this  
5 court can assume that Defendant's household income is  
6 *extraordinary* as proposed by Plaintiff. Regardless, if this Court  
7 imputed minimum wage to Defendant or even assumed that she  
8 is unemployed, Defendant's own income is meager. Thus, the  
9 assignment of his *pro bono* attorney. This Court made the  
10 ultimate determination on the incomes that the parties as  
11 submitted. [Exhibit B to Exhibit 1, 3:24-4:3] (emphasis in original)

12 See Plaintiff's motion, p.8, lines 27-30 to p.9, lines 1-12  
13 (referencing an affidavit from another lawsuit noting Defendant  
14 herself is listed as a "managing member" wherein Defendant's  
15 husband claimed to have lost hundreds of millions of dollars).  
16 [Exhibit B to Exhibit 1, footnote 2 on page 4]

17 As noted in the Decision and Order, this remand affair was  
18 spearheaded by Defendant's husband's "catfishing" expedition  
19 that spawned this latest litigation. To reiterate, this Court does  
20 *not* believe that Defendant had no knowledge as she claimed.  
21 [Exhibit B to Exhibit 1, footnote 4 on page 4] (emphasis in  
22 original)

23 Appellant has a history, which continues through the instant appeal, of initiating and  
24 then continuing frivolous and expensive litigation while professing poverty. She repeatedly  
25 harasses Respondent by filing fabricated CPS and criminal allegations. This has been  
26 proven multiple times by admissible documentary and testimony evidence and the district  
27 court has expressly made findings of fact regarding both Appellant's improper actions, and  
28 the improper actions of her wealthy husband.

This Court in particular should be concerned with Appellant hoodwinking it, to use  
the district court's term, by continuing with the previous appeal knowing that the evidence  
on which she was basing her appeal was fabricated. No supporting evidence was  
produced by Appellant at a trial which she requested in February, 2017 and the trial  
happened in May, 2019.

1 CONCLUSION

2  
3 The Amended Decision and Order is not a final, appealable order even under  
4 NRAP 3A(b)(8) because it invites submission of another document for the court to  
5 sign, in the form of a judgment. Under *Valley Bank of Nev.*, what the Amended  
6 Decision and Order is called is irrelevant, it's what the Order does that controls. The  
7 order at issue is merely the decision, with a judgment to be submitted later by  
8 counsel.

9 The appeal deadline has not run on Respondent's Amended Judgment as the  
10 Notice of Entry was filed and served September 24, 2019. [Exhibit 2] Thus, either  
11 a new appeal will be have to be filed, or there will be an unappealed judgment.

12 Respondent respectfully requests that this appeal be dismissed.

13 By: /s/ Benjamin B. Childs

14 BENJAMIN B. CHILDS, ESQ.  
15 Nevada Bar #: 3946  
16 Attorney for Respondent

17 CERTIFICATE OF SERVICE

18  
19 Both attorneys and the Settlement Judge, Ishi Kunin, are electronic filers, so  
20 this RESPONDENT'S REPLY TO RESPONSE TO MOTION TO DISMISS APPEAL  
21 will be transmitted to Appellant's counsel and Settlement Judge Kunin through the  
22 electronic filing system. Counsel will additionally email the filed RESPONDENT'S  
23 REPLY TO RESPONSE TO MOTION TO DISMISS APPEAL to John Jones at  
24 jjones@blacklobello.law and Ishi Kunin at ishi@kuninlawgroup.com.

25 By: /s/ Benjamin B. Childs

26 BENJAMIN B. CHILDS, ESQ.  
27 Nevada Bar #: 3946  
28 Attorney for Respondent