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

3
4 **MARIELA EDITH LOPEZ,**
5 Appellant,

6 vs.

7 **MANUEL DE JESUS SERBELLON**
8 **PORTILLO,**
Respondent.

Supreme Court No. 79549
Electronically Filed
Jan 09 2020 03:36 p.m.
District Court Case No. Elizabeth A. Brown
D-18-565713-C Clerk of Supreme Court

9 **APPENDIX TO APPELLANT'S OPENING BRIEF**
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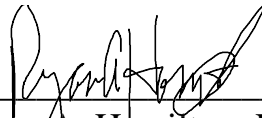
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25

1 A. Custody Decree denying reunification prong (KML_0001-0006);

2 B. Transcript from June 12, 2019 hearing (KML_0007-0023);

3
4 DATED this 3rd day of January 2020.

5 HAMILTON LAW

6 

7 _____
8 Ryan A. Hamilton, Esq.

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15 *Attorney for Appellant*

Exhibit A

Steven D. Grierson

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DISTRICT COURT
CLARK COUNTY, NEVADA

MARIELA EDITH LOPEZ,
Plaintiff,

MANUEL DE JESUS SERBELLON
PORTILLO,
Defendant.

} Case No: D-18-565713-C
} Dept. No.: C
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CUSTODY DECREE

This Decree is submitted after a hearing that occurred on June 12, 2019 before the above-entitled court, and after a review of the pleadings and papers on file and the testimony given, if any, this Court finds pursuant to NRS 125C.001 through 125C.250, inclusive, as follows:

1. That Plaintiff, for a period of more than six weeks immediately preceding the filing of the Complaint, has been and now is an actual, bona fide resident of the State of Nevada, County of Clark, and has been actually physically present and domiciled in Nevada for more than six (6) weeks prior to the filing of the Complaint.
2. That Defendant is a resident of the country of El Salvador.
3. That the parties have one minor child, the issue of this relationship, to wit: Keokes Manuel Lopez, born on May 31, 2007. The habitual residence of the child has been the State of Nevada since December 2016.
4. That the parties were never married.

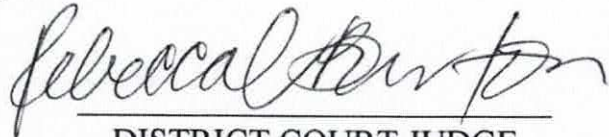
- 1 5. That the paternity of the minor child, to wit: Keokes Manuel Lopez, is not at
2 issue.
- 3 6. That no Court has ever issued an order regarding the custody or visitation of
4 the minor child.
- 5 7. That the Plaintiff is a fit and proper person to be awarded Sole Legal
6 Custody of the minor child.
- 7 8. That the child's natural father has abandoned the child as defined by NRS
8 128.014. That the father has not been present in the child's life and has never
9 provided food, shelter, or financial support.
- 10 9. That it is not in the best interest of the child to award Defendant either joint
11 or primary physical custody.
- 12 10. That this Court is unable to find that reunification is not viable due to
13 abandonment because this Court is unable to predict whether the father will
14 seek to reunify with the child some time in the future.
- 15 11. That it is in the best interest of the minor
16 child that he reside with Plaintiff/Mom.
17 *or*
- 18 12. That pursuant to EDCR 5.07, Plaintiff and Defendant shall each shall
19 successfully complete the Parenting Class within 45 days of service of
20 the initial complaint upon the Defendant, and that no action shall proceed to
21 final hearing until a notice of completion or the class has been filed with the
22 court, provided the noncompliance by a parent who does not enter an
23 appearance shall not delay a final hearing.
- 24 13. That child support cannot be awarded at this time because the biological
25 father resides outside of the jurisdiction of this Court.
- 26 14. That Plaintiff should maintain medical and dental insurance for the minor
27 child, if available at a reasonable cost. Any unreimbursed medical, dental,
28

1 optical, orthodontic or other health related expenses incurred for the benefit
2 of the minor child is to be divided equally between the parties.

3 NOW THEREFORE, IT IS HEREBY ORDERED that sole legal and
4 physical custody is GRANTED to Plaintiff as requested in the Complaint.
5 IT IS FURTHER ORDERED that medical and dental insurance coverage
6 and the payment of unreimbursed medical expenses for the minor child is
7 GRANTED as requested in the Complaint.

8
9 IT IS HEREBY ORDERED that the Plaintiff's Custody Decree is
10 GRANTED.

11 DATED this 16 day of June, 2019.

12
13 

14 DISTRICT COURT JUDGE
15 REBECCA L. BURTON

16 Respectfully Submitted:

17 HAMILTON LAW

18
19 By: 

20 SARAH I. PEREZ, ESQ.
21 Nevada Bar No.: 12628
22 5125 S. Durango Dr., Ste C
Las Vegas, Nevada 89113
(702) 818-1818
Attorney for Petitioner

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1 must be in an amount determined by the court and may be used
2 only to pay for the cost of locating the child and returning the
3 child to his or her habitual residence if the child is wrongfully
4 removed from or concealed outside the country of habitual
5 residence. The fact that a parent has significant commitments in
6 a foreign country does not create a presumption that the parent
7 poses an imminent risk of wrongfully removing or concealing
8 the child.

9 NOTICE IS HEREBY GIVEN that, pursuant to NRS 125C.006:

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

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

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

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

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

29 (b) For the purpose of harassing the custodial
30 parent.

31 3. A parent who relocates with a child pursuant to this
32 section without the written consent of the noncustodial parent
33 or the permission of the court is subject to the provisions of NRS
34 200.359

35 ////

1 NOTICE IS HEREBY GIVEN that, pursuant to NRS 125C.0065:

2 1. If JOINT PHYSICAL CUSTODY has been established
3 pursuant to an order, judgment or decree of a court and one
4 parent intends to relocate his or her residence to a place outside
5 of this State or to a place within this State that is at such a
6 distance that would substantially impair the ability of the other
7 parent to maintain a meaningful relationship with the child, and
8 the relocating parent desires to take the child with him or her,
9 the relocating parent shall, before relocating:

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

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

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

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

21 (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

Exhibit B

1 **TRANS**

FILED

OCT 28 2019

Alfred L. Johnson
CLERK OF COURT

COPY

5 **EIGHTH JUDICIAL DISTRICT COURT**

6 **FAMILY DIVISION**

7 **CLARK COUNTY, NEVADA**

9 MARIELA EDITH LOPEZ,)

10 Plaintiff,)

11 vs.)

12 JESUS DE MANUEL PORTILLO,)

13 Defendant.)

CASE NO. D-18-565713-C

DEPT. C

SUPREME COURT CASE NO.
79549

16 BEFORE THE HONORABLE REBECCA L. BURTON
17 DISTRICT COURT JUDGE

18 TRANSCRIPT RE: HEARING FOR CUSTODY

20 WEDNESDAY, JUNE 12, 2019

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APPEARANCES:

The Plaintiff:
For the Plaintiff:

MARIELA EDITH LOPEZ
SARAH I. PEREZ, ESQ.
5125 S. Durango St., #C
Las Vegas, Nevada 89113
(702) 818-1818

The Defendant:

JESUS DE MANUEL PORTILLO
(NOT PRESENT)

Also Present:

IRMA SANCHEZ-GASTELUM
Court Interpreter

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I N D E X O F W I T N E S S E S

PLAINTIFF'S
WITNESSES:

DIRECT

CROSS

REDIRECT

RECROSS

MARIELA EDITH LOPEZ

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DEFENDANT'S
WITNESSES:

(None presented)

* * * * *

I N D E X O F E X H I B I T S

PLAINTIFF'S
EXHIBITS:

ADMITTED

(None presented)

DEFENDANT'S
EXHIBITS:

(None presented)

1 LAS VEGAS, NEVADA

MONDAY, AUGUST 25, 2014

2 P R O C E E D I N G S

3 (THE PROCEEDINGS BEGAN AT 08:40:51)

4 THE CLERK: We're on the record.

5 THE COURT: This is case D-18-565713-C, Mariela
6 Edith Lopez versus Manuel De Jesus Serbellon Portillo, and we
7 are here for a default -- or for prove up of a custody action,
8 and a request for SIJS (ph) findings. Counsel, state your
9 appearance, please?

10 MS. PEREZ: Sarah Perez, bar number 12628, on behalf
11 of the Plaintiff.

12 THE INTERPRETER: Irma Sanchez-Gastelum, Court
13 certified Interpreter, in Spanish, NVSG 1459.

14 THE COURT: Okay. Thank you. And please raise your
15 right hand and be sworn in?

16 THE CLERK: Do you solemnly swear the testimony
17 you're about to give in this action shall be the truth, the
18 whole truth, and nothing but the truth, so help you God?

19 THE PLAINTIFF: Yes.

20 THE COURT: All right. And for the record, this
21 matter was before the Court some months ago, and the Court had
22 requested that Dad be personally served with a copy of the
23 complaint both in English and in Spanish. And that was
24 accomplished; there was proof of service filed with the Court,

1 so go ahead, Counsel.

2 MARIELA EDITH LOPEZ

3 called as a witness on her own behalf, having been first duly
4 sworn, did testify upon her oath as follows on:

5 DIRECT EXAMINATION

6 BY MS. PEREZ:

7 Q Can you please state your name for the record?

8 A Mariela Edith Lopez.

9 Q And do you have -- what is your child's name?

10 A Keokes Manuel Lopez.

11 Q Okay. And what is his Father's name?

12 A Jesus de Manuel Serbellon Portillo.

13 Q And who is Keokes living with?

14 A With me. With me, with the Mom.

15 Q Okay. And are you the only one taking care of
16 Keokes?

17 A Yes.

18 Q Okay. Has his father provided you with any
19 financial assistance?

20 A No.

21 Q Okay. Has he maintained a relationship with this --
22 your child?

23 A No.

24 Q Has he ever taken care of Keokes?

1 A No.

2 Q Okay. Do you -- are you willing to continue taking
3 care of Keokes?

4 A Yes.

5 Q Okay. Where was Keokes living before he came to
6 live with you?

7 A In El Salvador.

8 Q Okay. So when did he come to live with you?

9 A In 2017.

10 Q Okay. And who was he living with in El Salvador?

11 A With my mother.

12 Q Okay. And how come Keokes had to come and live with
13 you?

14 A Because she could not take care of him anymore, and
15 she has a heart illness. And because of the gang activity
16 going on in all the schools that he was studying in.

17 Q Okay. Do you believe that Keokes's life is in
18 danger in El Salvador?

19 A Yes.

20 Q Okay. Was he or his family ever victimized by the
21 gangs?

22 A Well, at -- at one time, the gang members came over
23 to the neighbor's house, and they actually killed them, and
24 they went inside the house where they were in.

1 Q Okay. Where -- where -- they went into the house
2 where who was in?

3 A They -- and you know they were with my neighbors,
4 and sometimes they would have contact with my mom. But then
5 they went inside my mom's house.

6 Q Okay. And is there -- is -- is there anywhere
7 that -- anybody that can take care of Keokes in El Salvador?

8 A No.

9 Q Okay. And has he been going to school here?

10 A Yes.

11 Q What school does he attend?

12 A He was going in Lomas Verdes -- attending Lomas
13 Verdes, California.

14 Q Okay. How long was he in California for?

15 A Five months.

16 Q Okay. So he's back here in Las Vegas?

17 A Yes.

18 Q Okay. And is he going to remain here in Las Vegas?

19 A Yes.

20 Q Okay. And -- all right. No further questions.

21 THE COURT: Yes. You need to establish why Mom
22 should have -- she's filed a comp -- a custody complaint.

23 MS. PEREZ: Yes.

24 THE COURT: And you're asking for sole legal

1 custody, sole physical custody, asking for child support from
2 Dad.

3 MS. PEREZ: Well, we've established that he hasn't
4 been supporting the child, and she's the only one that's
5 taking care of the child. He has made no contact with the
6 child. He --

7 THE COURT: Okay. You need to -- to -- well, you
8 need to establish that he could make contact with the child.
9 In other words, she's asking for sole legal custody. In cases
10 like, where someone is asking for sole legal custody, I want
11 to know could he -- I mean, is he participating, and could he
12 participate? Because one of the things that I notice about
13 this case is that Mom left the country where Dad is.

14 So does he know where the child is? Does he --
15 could he participate? Does he have Mom's phone number, does
16 he have -- in other words, because there's a legal presumption
17 that Mom should -- or I mean that the parties should have
18 joint legal custody. She has to overcome that presumption. I
19 need some testimony that he could participate if he wanted to
20 do -- wanted to.

21 One of my questions, too, is does he even know about
22 this child? Because some of the information that was provided
23 in the affidavit indicated that the parties separated before
24 the child was even born, and that Dad hasn't reached out for

1 the child, but how do we know that he even knows that the
2 child has been born?

3 MS. PEREZ: Okay.

4 THE COURT: Okay?

5 MS. PEREZ: Okay.

6 BY MS. PEREZ:

7 Q Does the Father of the child know about Keokes?

8 A Yes.

9 Q Okay. Has he ever met Keokes?

10 A No. No, he never looked for him.

11 Q Did you tell him that you had a child?

12 A Of course.

13 Q Okay. How long -- until what age did Keokes live in
14 El Salvador?

15 A Until he was 10.

16 Q And where does his Father live?

17 A In El Salvador.

18 Q Okay. And did the Father ever take care of Keokes
19 in El Salvador?

20 A No.

21 Q Did he ever go visit him?

22 A No.

23 Q Okay. Did he ever bring him birthday gifts?

24 A No.

1 Q Did he ever bring him clothing?

2 A No.

3 Q Did he ever bring him food?

4 A No.

5 Q Did he ever provide him with a shelter or a place to
6 live?

7 A No.

8 Q Did he ever provide him protection from dangerous
9 people, like gangs?

10 A No.

11 Q Okay. Has he called you to see if he can be part of
12 Keokes's life?

13 A No.

14 Q Does he know that Keokes is now living here with
15 you?

16 A Yes.

17 Q Okay. Has he tried to establish any communication
18 with Keokes?

19 A No.

20 Q Okay.

21 THE COURT: My question is, could he? Does he know
22 your phone number?

23 THE PLAINTIFF: He knows my mother, his grandmother,
24 so nothing.

1 THE COURT: Does he know you -- does he know your
2 phone number? Could he -- when did you tell him that you had
3 a child?

4 THE PLAINTIFF: The first month I knew I was
5 pregnant.

6 THE COURT: Okay. Did you tell him the child was
7 born?

8 THE PLAINTIFF: Yes.

9 THE COURT: When?

10 THE PLAINTIFF: As soon as he was born in 2017.

11 THE COURT: Pardon me?

12 MS. PEREZ: I'm sorry. What year was he born?

13 THE PLAINTIFF: 2007.

14 THE COURT: Okay. And when did you tell Dad that
15 the child was born?

16 THE PLAINTIFF: At the moment of birth, when I was
17 in the hospital, I left the hospital, and he knew, the family
18 knew.

19 THE COURT: Okay. Tell me how he knew.

20 THE PLAINTIFF: So the Father has a -- a father, so
21 that's the grandfather, and he was the person that I paid to
22 take me to the hospital, and he wasn't part of that. The Dad
23 wasn't part of that, so.

24 THE COURT: Okay. You're still not telling me how

1 Dad knows that you gave birth to his child. You're telling me
2 other people know, but you're not telling me Dad knows.

3 THE PLAINTIFF: Because I told him.

4 THE COURT: And that's what I asked you. When did
5 you tell him?

6 THE INTERPRETER: May the Interpreter intercede,
7 Your Honor? I -- this is a culture -- cultural wording.

8 THE COURT: Okay.

9 THE INTERPRETER: That's why she's not answering.

10 THE COURT: Go ahead. Go ahead.

11 THE PLAINTIFF: On September 2nd, I spoke with him.
12 I called him and told him he had a son.

13 THE COURT: September 2nd of '07?

14 THE PLAINTIFF: Yes.

15 THE COURT: Okay. And did he -- did you leave him
16 with your phone number, address? Did he have a way of
17 reaching you?

18 THE PLAINTIFF: Yes.

19 THE COURT: Okay. And for how long?

20 THE PLAINTIFF: Since always. He's always known how
21 to contact me, and where.

22 THE COURT: Okay. Is -- is like, your phone number
23 the same?

24 THE PLAINTIFF: So the phone number in El Salvador

1 was the same phone number, and the one I have here, it's
2 always been one same phone number.

3 THE COURT: It's the same phone number? Okay.
4 Counsel, the reason why it's important is because you're
5 asking me to make a determination of abandonment, and if
6 there's a -- I -- abandonment is based on intent. If he
7 doesn't know he even has a child, he can't intend to abandon a
8 child he doesn't know about, and -- nor can he -- nor can
9 there be -- is the Court going to make a finding of
10 abandonment in a situation where he wouldn't know how to reach
11 Mom, or, you know, be able to -- to contact her.

12 Because the Court's concern is that Mom has left the
13 country, so Mom's act could be contermine -- determined to be
14 an abduction, you know, away from Dad. So I've got to know
15 the whole circumstances in his -- her taking -- removing a
16 child, her -- if -- if it was an abduction -- I'm not making
17 that finding -- but it -- an abduction isn't his abandonment.
18 Do you understand? That would be --

19 MS. PEREZ: (Indiscernible - simultaneous speech).

20 THE COURT: -- terribly unfair --

21 MS. PEREZ: And that would not be in line with the
22 facts, because actually, she did not bring the child here.
23 The child came on his own.

24 THE COURT: A 10 year old came here on his own?

1 MS. PEREZ: Yeah. She -- she was living here before
2 the child even arrived in the United States. And the child
3 came -- well, he came with his sister, and he came because he
4 was in danger in his country. She did not bring him.

5 She left him actually with his grandmother, and
6 those are the facts that she just testified to today. He was
7 living with his grandmother before he came to live here with
8 her.

9 THE COURT: Okay. All right. The Court finds that
10 Dad knew about the child, and has not made any effort to
11 support or have contact with the child, so the Court is
12 finding that there is an abandonment by Dad of this minor
13 child. That presents also the basis for -- it's appropriate
14 to grant Mom's request for sole legal custody, and sole
15 physical custody.

16 The Court is wondering how we have jurisdiction over
17 Dad to order him to pay support? Counsel, is there personal
18 jur -- do we have personal jurisdiction?

19 MS. PEREZ: He doesn't live here, so -- I mean, if
20 he one day does come to the United States, we probably would
21 be able to have that jurisdiction. But he does -- he lives in
22 El Salvador.

23 THE COURT: Okay. So the Court's not going to make
24 a finding, based on a lack of personal jurisdiction over Dad,

1 the Court is not making an order of child support, because the
2 Court lacks personal jurisdiction over Dad. The Court has
3 placed the child in Mom's custody.

4 The Court is finding that reunification -- well, I
5 don't know if reunification is not viable, but the Court is --
6 in the paperwork, Mom is asking the Court to make findings of
7 abuse and neglect. Since the child was never in Dad's care,
8 the Court cannot make a finding of abuse or neglect. Those
9 require the child to actually be in the care of the other
10 parent.

11 But the Court is making a finding that there's been
12 abandonment, and it's in the child's best interests to reside
13 with Mom. Okay?

14 MS. PEREZ: If -- if there is abandonment, Your
15 Honor, just a question, would reunification be viable, with a
16 person that has abandoned --

17 THE COURT: I don't know.

18 MS. PEREZ: -- a child?

19 THE COURT: I -- I don't know. We have people who
20 come back and -- after several years being away from a child,
21 and they do come back. I've known -- I've had cases where
22 people have been gone like maybe, I don't know, eight years or
23 several years. And they come back and they reunify. And so
24 it is a possibility.

1 MS. PEREZ: Okay. Thank you. We'll go ahead and
2 put these findings --

3 THE COURT: I mean, I've had -- I don't have
4 evidence that it's not viable. The man is still -- he's not
5 deceased, he's not -- there's not -- there's nothing that
6 would make it impossible.

7 MS. PEREZ: Right. But he has already established
8 that he has no interest in being this child's --

9 THE COURT: That doesn't mean that he might not
10 develop one down the road.

11 MS. PEREZ: All right. No problem. I will reduce
12 these findings into writing and submit the order later.

13 THE COURT: Thank you.

14 MS. PEREZ: Thank you. You have a great day, Your
15 Honor.

16 THE COURT: Can you submit the order by -- let me
17 see -- two weeks would be the 26th, June 26th.

18 MS. PEREZ: June 26th. Will do, Your Honor.

19 THE COURT: Thank you. Thank you, ma'am.

20 (PROCEEDINGS CONCLUDED AT 08:56:32)

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ATTEST: I do hereby certify that I have truly and
correctly transcribed the digital proceedings in the
above-entitled case to the best of my ability.

/s/ Nita Painter
Nita Painter