IN THE COURT OF APPEALS OF THE STATE OF NEVADA

DEVIN LAWRIMORE,

Appellant,

vs.

GENIE LAWRIMORE; AND PAMELA BUNDY,

Respondents.

No. 78794-COA

MOTION TO REISSUE ORDER AS AN OPINION

COMES NOW Emily McFarling, Esq. of McFarling Law Group, as an interested party to clarifying the law and hereby moves this Court to officially publish the Order Vacating Judgment in Part and Remanding issued in this matter on April 23, 2020.

This Motion is based upon Points and Authorities, Affidavit of Emily McFarling, Esq. and all other papers and pleadings on file herein.

DATED this 28th day of April, 2020.

MCFARLING LAW GROUP

By: _*/s/ Emily McFarling*_____
Emily McFarling, Esq.
Nevada Bar No. 8567
6230 W. Desert Inn Rd.
Las Vegas, NV 89146
(702) 565-4335
Movant

POINTS AND AUTHORITIES

A. THE ORDER SHOULD BE PUBLISHED BECAUSE IT CLARIFIES A RULE OF LAW

A motion to reissue an unpublished disposition or order as an opinion to be published in the Nevada Reports may be made by any interested person, if filed by or on behalf of a nonparty, the motion must also identify the movant and his or her interest in obtaining publication.

Moreover, such motion must be based on one or more criteria as set forth in Rule 36(c)(1)(A)-(C), which states as follows:

The Supreme Court or Court of Appeals will decide a case by published opinion if it:

(A) Presents an issue of first impression;
(B) Alters, modifies, or significantly clarifies a rule of law previously announced by the court; or
(C) Involves an issue of public importance that has application beyond the parties.[1]

This motion is being brought by Attorney, Emily McFarling, Esq. of McFarling Law Group, as an interested party to clarifying the law. The undersigned is licensed to practice law in the State of Nevada, is a Nevada Board Certified Family Law Specialist and a fellow of the American Academy of Matrimonial Lawyers.

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[1] *See* NRAP 36 generally.

1. THIRD PARTY CUSTODY

In this case, the issue(s) presented in this appeal clarifies a rule of law by applying the factors listed in *Locklin* to allow a third party custody claim in a divorce action, specifically that the determination of whether granting custody to a parent would be "detrimental" requires a separate analysis applying *Locklin.*

As stated in the Order, there is no definition of the word "detrimental", thus the Nevada Supreme Court established a list of factors the district court **must** apply to "determine whether there is sufficient determine to the welfare of the child to overcome the parental presumption," the *Locklin* factors.

In this case, the district court cited to NRS 125C.004(1) when it concluded that awarding custody to the minor children's father would be detrimental to the children and then proceeded to apply NRS 125C.0035(4), and failed to consider the *Locklin* factors.

Even with extensive findings pertaining to the statutory best interest factors, this matter was remanded for further proceedings because the court failed to consider such factors.

By publishing this Order, the public will now be well-informed that where a district court is applying NRS 125C.004(1) to determine whether to award any custody rights to a nonparent, the court must analyze the *Locklin* factors. In addition, district court judges will deviate from using other definitions, such as one

from the dictionary, which is not sufficient, and follow the standard that the Supreme Court wants them to follow to avoid repeating the same oversight that happened in this case.

2. CUSTODY ORDERS ON REMAND

Footnote 5 of the Order provides, "The current physical custody award shall remain in effect until and unless the district court reaches a different conclusion on remand. In many custody cases on remand, the District Court will maintain a child custody arrangement that was reversed as the default arrangement until further final orders can be entered without any analysis or basis for maintaining the reversed child custody arrangement. This footnote, appropriately in this case, specifically directs the district court to maintain the current physical custody award. The implication is that, unless specifically directed to maintain the current custody award, a reversed child custody award does not remain in place on remand. This footnote provides clarification as to the rule of law that a reversed custody award does not remain in place on remand unless the district court is directed to do so. Having such clarification published would greatly assist the district court in determining how to handle reversed orders.

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WHEREFORE, Movant requests the Court grant her request to publish the Order entered April 23, 2020, as an opinion.

DATED this 28th day of April, 2020.

MCFARLING LAW GROUP

By: _*/s/ Emily McFarling*_____
Emily McFarling, Esq.
Nevada Bar No. 8567
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
Movant

DECLARATION OF EMILY MCFARLING, ESQ.

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

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 28th day of April, 2020.

MCFARLING LAW GROUP

/s/ Emily McFarling

Emily McFarling, Esq.
Nevada Bar Number 8567
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
Movant

CERTIFICATE OF SERVICE

I, an employee of McFarling Law Group, hereby certify that on the 28th day of April, 2020, I served a true and correct copy of Motion to Reissue Order as an Opinion, as follows:

__x___ by United States mail in Las Vegas, Nevada, with First-Class postage prepaid and addressed as follows:

Genie Lawrimore
P.O. Box 682
Logandale, NV 89021
Respondent in proper person

___x___ via the Supreme Court's electronic filing and service system (eFlex):

Alicia Exley, Esq.
Pecos Law Group
Attorney for Appellant

Byron Mills, Esq.
Attorney for Respondent, Pamela Bundy

/s/Maria Rios Landin
Maria Rios Landin