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DOCKETING STATEMENTS
CIVIL APPEALS

Electronically Filed
Mar 11 2020 06:29 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

VS.

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- **Other:**

1 The District Court entered an order finally altering custody of a minor child in an
2 action that did not arise in juvenile court.

3 **5. Does this appeal raise issues concerning any of the following:**

- 4 • **Child Custody**
5 • **Venue**
6 • **Adoption**
7 • **Termination of parental rights**
8 • **Grant/denial of injunction or TRO**
9 • **Juvenile matters**

10 Yes. Child Custody

11 **6. Pending and prior proceedings in this court.**

12 Case No. 74696; DiMonaco v. Ferrando

13 **7. Pending and prior proceedings in other courts.**

14 J-20-350444-P1; In the Matter of Grayson DiMonaco-Ferrando; Eighth Judicial
15 District Court, Dependency 3;

16 J-20-350444-PC; In the Matter of Grayson DiMonaco-Ferrando; Eighth Judicial
17 District Court, Dependency 3;

18 D-16-539340-C; DiMonaco v. Ferrando; Eighth Judicial District Court, Department
19 E; and

20 T-20-203094-T; DiMonaco v. Ferrando; Eighth Judicial District Court, Department
21 E.

22 **8. Nature of the action:**

This appeal revolves around post-decree custody issues relative to the subject minor child's afterschool care and the ability of Appellant to defend his fundamental rights by being afforded procedural due process.

Due to Appellant's work schedule, during his custodial days, the parties' minor child was enrolled in the accredited afterschool learning program offered at the school he attends. Following the start of the school year, Respondent sought orders allowing her to care for the minor child on occasions when Appellant was working during his custodial time. When Appellant declined, Respondent filed a Motion. Respondent sought – as her sole requested relief within her motion – orders allowing her to care for the minor child after school in lieu of his attending the accredited afterschool program during Appellant's custodial timeshare.

1 This matter came for a hearing before the District Court regarding Respondent's
2 Motion for afterschool care on September 26, 2019. In its October 7, 2019 Order the District
3 Court not only permanently changed the custodial orders by ordering that Appellant allow
4 Respondent to care for the minor child during his custodial time when Appellant was
5 unavailable, but additionally granted *sua sponte* relief by ordering that Respondent would
6 care for the minor child over any third party (including relatives) when Appellant was
7 unavailable during his custodial timeshare. The Court's Order contained bare legal authority
8 supporting the Court's decisions and did not contain a proper best interest analysis as
9 mandated by NRS 125C.0035(4) when modifying the custodial order. Further, and perhaps
10 most important, in so doing, the Court made permanent modifications to the parties'
11 custodial orders without holding an evidentiary hearing.

12 Based on the foregoing, Appellant sought to resolve several procedural and
13 substantive irregularities contained within the District Court's Order by filing his Motion for
14 a Trial, to Amend Judgment, and for Related Relief on November 1, 2019. Specifically,
15 Appellant argued that the Court's permanent change to his custodial time and control
16 amounted to governmental interference with his fundamental right of parentage and, that
17 prior to making a permanent change to a custodial schedule, the Court is required to conduct
18 an evidentiary proceeding to afford the parties adequate procedural due process by and
19 through the opportunity to testify, to confront witnesses, and to present and rebut evidence.

20 Additionally, Appellant argued that the Court's *sua sponte* order prohibiting him from
21 utilizing any third party caregiver during certain periods of his custodial time resulted in
22 Appellant not being afforded adequate notice that these additional custodial rights had been
placed at stake in the litigation.

23 In support of his request for a trial, Appellant directed the Court to NRCP
24 59(a)(1)(A), which permits a party to seek a new trial if an irregularity within an order of the
25 Court or an abuse of discretion materially affected that party's substantial rights. Appellant
26 asserted that his fundamental rights were materially affected by the Order as it resulted in a
27 permanent decrease in his custodial time and a non-reciprocal prohibition on his use of any
28 third-party care giver. Appellant opined that the failure of the Order to support, with
29 substantial evidence, the District Court's best interest findings when making a permanent
30 change to a custodial schedule constituted an abuse of discretion and, as a result, the matter
31 was ripe for an evidentiary hearing. After holding a hearing regarding Appellant's Motion,
32 the Court did amend the Order to include an analysis of the best interest factors, however, it
33 did so without taking any evidence, and in so doing infringed upon Appellant's rights to
34 adequate procedural due process.

35 Of additional concern to Appellant, the Amended Order was partially premised upon
36 the District Court's application of a policy providing it is in the minor child's best interest to
37 be in the care of a fit parent over a third party.

38 ...

39 ...

1 **9. Issues on appeal:**

2 Whether the District Court erred in granting Respondent's Motion wherein
3 Respondent sought to exercise custody over the minor child during certain periods of
 Appellant's custodial time in lieu of a specific afterschool program without holding
 an evidentiary hearing or taking any evidence in the matter.

4 Whether the District Court, in granting additional relief not requested within
5 Respondent's Motion regarding after school care (i.e. allowing Respondent to care for
6 the minor child after school on certain of Appellant's custodial days, in lieu of any
 third party caregiver – even a relative), denied Appellant adequate notice that those
 additional rights were at stake, thereby depriving him appropriate procedural due
 process.

7 Whether the District Court erred in granting additional relief not requested within
8 Respondent's Motion regarding after school care on certain of Appellant's custodial
9 days, in lieu of any third party caregiver (even a relative), without holding an
 evidentiary hearing.

10 Whether the District Court premised its best interest analysis upon substantial
11 evidence sufficient to determine that the Orders impacting the minor child were
 indeed in the best interest of the minor child.

12 Whether the District Court erred by Ordering that Respondent's exercise of care of
13 the minor child during Appellant's custodial time would not be considered as part of
 future requests to modify custody.

14 Whether the District Court erred by utilizing a policy that it is in the child's best
15 interest to spend time with a fit parent rather than any third party caregiver (even a
 relative).

16 Whether the District Court erred by failing to make reciprocal enforceable Orders
17 granting Respondent the right to care for the minor child during certain periods of
 Appellant's custodial time.

18 Whether the District Court erred by finding its Order did not modify the parties'
19 custodial rights.

20 Whether the District Court erred in finding that Appellant did not demonstrate
21 adequate cause warranting further proceedings.

22 Whether the District Court erred by failing to make findings regarding the ability of
 the minor child to maintain a sibling relationship when rendering its Order.

...

1 **10. Pending proceedings in this court raising the same or similar issue.**

2 None.

3 **11. Constitutional issues. If this appeal challenges the constitutionality of a statute,**
4 **and the state, any state agency, or any officer or employee thereof is not a party to this**
5 **appeal, have you notified the clerk of this court and the attorney general in accordance**
6 **with NRAP 44 and NRS 30.130?**

5 None.

6 **12. Other issues. Does this appeal involve any of the following issues?**

- 7 • **Reversal of well-settled Nevada precedent (on attachment, identify the case(s))**
8 • **An issues arising under the United States or Nevada Constitutions**
9 • **A substantial issue of first impression**
10 • **An issue of public policy**
11 • **An issue where en banc consideration is necessary to maintain uniformity of this**
12 **court's decisions**
13 • **A ballot question**

11 This case presents an issue arising under the United States or Nevada Constitutions, a
12 substantial issue of first impression and issues pertaining to public policy.

12 The due process clause of the United States Constitution protects the fundamental
13 right of parents to make decisions concerning the care, custody, and control of their children.
14 As part of ensuring that this fundamental right inherent in parentage are protected, the
15 Nevada Supreme Court has held that prior to modifying a custody award a parent must be
16 presented with a full and fair hearing wherein evidence may be submitted for the District
17 Court's consideration. The issues presented in this case, wherein Respondent was granted the
18 right to exercise custodial time during certain periods wherein Appellant would otherwise
19 have the right to exercise custodial time provide this Court an opportunity to address whether
20 such Orders require that an evidentiary hearing first be held.

17 This appeal requests clarification as to what level of impact to a parent's existing
18 custodial rights warrants the District Court setting an evidentiary hearing.

18 As the District Court's Order was premised in part on a finding that the legislative
19 policy articulated in NRS 125C.001 provides that it is in the best interest of a child to be in
20 the care of a fit parent over any third party that may be designated by the custodial parent,
21 this appeal provides this Court with the opportunity to provide clarification regarding the
22 policy articulated in NRS 125C.001.

21 **13. Assignment to the Court of Appeals or retention in the Supreme Court?**

22 Pursuant to NRAP 17(a)(12) this matter should be retained in the Supreme Court.

1 **14. Trial. If this action proceeded to trial, how many days did the trial last?**

2 The Court denied Appellant's request for an evidentiary hearing.

3 **Was it a bench or jury trial?**

4 N/A.

5 **15. Judicial disqualification. Do you intend to file a motion to disqualify or have a**
6 **justice recuse him/herself from participating in this appeal? If so, which**
7 **Justice?**

8 No.

9 **TIMELINESS OF NOTICE OF APPEAL**

10 **16. Date of entry of written judgment or order appealed from (Attach a Copy):**

11 January 6, 2020 (attached hereto as Exhibit "11").

12 **17. Date written notice of entry of judgment or order served (Attach a copy with**
13 **proof of service):**

14 January 6, 2020 (attached hereto as Exhibit "12")

15 **(a) Was service by delivery or mail?**

16 Service was by e-service and hand delivery.

17 **18. If the time for filing the notice of appeal was tolled by a post-judgment motion**
18 **(NRCP 50(b), 52(b), or 59) (Attach copies of all tolling motions) (Motions pursuant to**
19 **NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a**
20 **notice of appeal):**

21 **(a) Specify the type of motion, and the date and method of service of the**
22 **motion, and the date of filing.**

Appellant's Motion for a Trial (pursuant to NRCP 59), to Amend Judgment (NRCP 52), and for Related Relief was filed with the District Court in November 1, 2019 and was served by e-service on November 1, 2019. (Attached hereto as Exhibit 8).

(b) Date of entry of written order resolving tolling motion:

January 6, 2020 (attached hereto as Exhibit "11")

1 (c) **Date written notice of entry of order resolving motion served:**

2 January 6, 2020 (attached hereto as Exhibit "12")

3 (i) **Was service by delivery or by mail?**

4 Service was by e-service and hand delivery.

5 **19. Date notice of appeal was filed:**

6 February 4, 2020 (attached hereto as Exhibit "13")

7 (a) **If more than one party has appealed from the judgment or order, list date**
8 **each notice of appeal was filed and identify by name the party filing the**
9 **notice of appeal:**

10 N/A

11 **20. Specify statute or rule governing the time limit for filing the notice of appeal:**

12 NRAP 4(a)(4).

13 **SUBSTANTIVE APPEALABILITY**

14 **21. Specify the statute or other authority granting this court jurisdiction to review**
15 **the judgment or order appeal from:**

16 NRAP 3A(b)(7)

17 **Explain how each authority provides a basis for appeal from the judgment or**
18 **order:**

19 NRAP 3A(b)(7) provides that "An appeal may be taken from the following judgments
20 and orders of a district court in a civil action... An order entered in a proceeding that did not
21 arise in a juvenile court that finally establishes or alters the custody of minor children"

22 Here, the order appealed from did not arise from a juvenile court and it finally altered
the custody of a minor child, providing this Court with jurisdiction pursuant to the plain
language of NRAP 3A(b)(7).

23 **22. List all parties to the action or consolidated actions in the district court:**

24 (a) **Parties:**

25 William DiMonaco, Plaintiff; and
26 Adriana Ferrando, Defendant.

1 (b) If all parties in the district court are not parties to this appeal, explain in
2 detail why those parties are not involved in this appeal:

3 N/A.

4 23. Give a brief description (3 to 5 words) of each party's separate claims,
5 counterclaim, cross claims or third-party claims, and the trial court's disposition
6 of each claim, and how each claim was resolved (i.e., order, judgment,
7 stipulation), and the date of disposition of each claim. Attach a copy of each
8 disposition.

9 Respondent's Claims:

10 Custodial modification during Appellant's timeshare.

11 Appellant's Claims:

12 Designate caregiver during custodial time

13 Maintain custodial orders

14 Court's Disposition:

15 Orders granting / exceeding Respondent's relief (Attached hereto as Exhibit 6).

16 Appellant's Claims:

17 Hold an evidentiary hearing

18 Support findings with substantial evidence

19 Amend Order granting Respondent's motion

20 Respondent's Claims:

21 Maintain October 7, 2019 Orders

22 Court's Disposition:

Deny Appellant's request for evidentiary hearing (Attached hereto as Exhibit 11).

Amend October 7, 2019 Orders (Attached hereto as Exhibit 11).

23 24. Did the judgment or order appealed from adjudicate ALL the claims
24 alleged below and the rights and liabilities of ALL the parties to the action below?

25 Yes.

26 25. If you answered "No" to the immediately previous question, complete the
27 following:

28 (a) Specify the claims remaining pending below:

29 N/A

1 **(b) Specify the parties remaining below:**

2 N/A

3 **(c) Did the district court certify the judgment or order appealed from as a**
4 **final judgment pursuant to NRCP 54(b)?**

4 N/A

5 **(d) Did the district court make an express determination, pursuant to NRCP**
6 **54(b), that there is no just reason for delay and an express direction for**
7 **the entry of judgment?**

7 N/A

8 **26. If you answered “No” to any part of question 25, explain the basis for seeking**
9 **appellate review:**

9 N/A

10 **27. Attach copies of the last-filed version of all complaints, counterclaims, and/or**
11 **cross-claims; any tolling motion(s) and order(s) resolving tolling motions; Orders of**
12 **NRCP 41(a) dismissals formally resolving each claim or consolidated action below, even**
13 **if not at issue on appeal; any other order challenged on appeal; and notice of entry for**
14 **each attached order filed in the district court.**

13 The Complaint is attached hereto as Exhibit 1.

14 The Answer and Counterclaim is attached hereto as Exhibit 2.

15 Respondent’s Motion to Allow After School Care is attached hereto as Exhibit 3.

16 Appellant’s Opposition to Motion to Allow After School Care is attached hereto as
17 Exhibit 4.

17 Respondent’s Reply to Appellant’s Opposition to Motion to Allow After School Care
18 is attached hereto as Exhibit 5.

18 Order After September 26, 2019 Hearing is attached hereto as Exhibit 6.

19 Notice of Entry of Order After September 26, 2019 Hearing is attached hereto as
20 Exhibit 7.

21 Appellant’s Motion for a Trial, to Amend Judgment and related relief is attached
22 hereto as Exhibit 8.

1 Respondent's Opposition to Motion for a Trial, to Amend Judgment and related relief
is attached hereto as Exhibit 9.

2 Appellant's Reply to Respondent's Opposition to Motion for a Trial, to Amend
3 Judgment and related relief is attached hereto as Exhibit 10.

4 Amended Order is attached hereto as Exhibit 11.

5 Notice of Entry of Amended Order is attached hereto as Exhibit 12.


6 Notice of Appeal is attached hereto as Exhibit 13.

7 **VERIFICATION**

8 I declare under penalty of perjury that I have read this docketing statement, that the
9 information provided in this docketing statement is true and complete to the best of my
10 knowledge, information and belief, and that I have attached all required documents to this
11 docketing statement.

12 William DiMonaco, Appellant
13 Matthew H. Friedman, Esq.
Tony T. Smit, Esq.
Counsel for Appellant

14 Dated this 11 day of March, 2020.

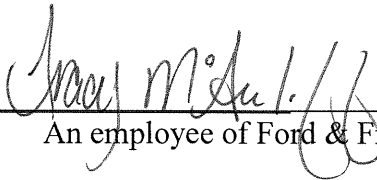
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16 Matthew H. Friedman, Esq.
Tony T. Smith, Esq.
Signed in Clark County, Nevada

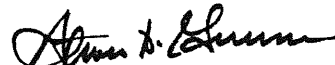
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of March, 2020 I did serve a true and accurate copy of the foregoing **DOCKETING STATEMENT: CIVIL APPEALS** by depositing same in the U. S. Mail, postage pre-paid, addressed to:

Michael P. Carman, Esq.
Fine, Carman, Price
8965 S. Pecos Rd., Ste. 9
Henderson, Nevada 89074
Counsel for Respondent


An employee of Ford & Friedman

“EXHIBIT 1”


CLERK OF THE COURT

COMC
LAW OFFICES OF F. PETER JAMES, ESQ.
F. Peter James, Esq.
Nevada Bar No. 10091
Peter@PeterJamesLaw.com
3821 West Charleston Boulevard, Suite 250
Las Vegas, Nevada 89102
702-256-0087
702-256-0145 (fax)
Counsel for Plaintiff

**DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA**

WILLIAM DIMONACO,

Plaintiff,

CASE NO. : D-16-539340-C
DEPT. NO. : Q

vs.

COMPLAINT FOR CUSTODY

ADRIANA DAVINA FERRANDO,

Defendant.

COMES NOW Plaintiff, William DiMonaco, by and through his counsel, F. Peter James, Esq., who, as and for a Complaint for Custody, hereby alleges and requests relief as follows:

1. That Plaintiff, for a period of more than six weeks immediately preceding the filing of this action, 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 this action.
2. That Plaintiff and Defendant were never married to each other.
3. That there is one minor child at issue, to wit: Grayson Ashton DiMonaco-Ferrando (born August 12, 2014 (hereinafter "the child")); the parties have no other minor

1 children together, no adopted children, and, Defendant ("Mom") is not currently
2 pregnant with Plaintiff's child.

3 4. That the child has resided in the State of Nevada since his birth; thus, Nevada is the
4 home state of the child and his state of habitual residence.

5 5. Plaintiff is the natural father of the child. Plaintiff signed an affidavit of paternity as to
6 the child, the same has not been revoked, and Plaintiff is listed as the child's natural
7 father on the child's birth certificate. The child bears Plaintiff's surname. Plaintiff has
8 held the child out to the world as his natural child.

9 6. To Plaintiff's knowledge, custody of the child has not been adjudicated in any other
10 court proceeding.

11 7. The parties are fit and proper persons to be awarded joint legal custody of the child,
12 and should be awarded the same.

13 8. The parties are fit and proper persons to be awarded joint physical custody of the child,
14 and should be awarded the same.

15 9. Defendant has unreasonably restricted Plaintiff's access to the child. Defendant has, in
16 great part, frustrated Plaintiff's efforts to develop a meaningful relationship with the
17 child, though Plaintiff has managed to develop a strong bond with the child nonetheless.

18 10. Child support should be set pursuant to Nevada law, subject to appropriate deviations
19 under NRS 125B.080(9).

20 11. The Court should set a joint physical custody visitation schedule. As Plaintiff has
21 another child from a different relationship, the visitation schedule for the present child
22 should follow that schedule so the children can have more time with each other to bond.

23

24

1 12. Plaintiff should maintain the child's health insurance if the same is available through
2 his employer at a reasonable cost.

3 13. The child's unreimbursed medical, dental, optical, orthodontic, and mental health
4 expenses should be equally born by each party subject to the 30/30 rule. The 30/30
5 rule provides that the party paying any unreimbursed medical expenses has thirty (30)
6 days from the date the expense is paid to forward proof of payment to the opposing
7 party. If that party does not timely forward the proof of payment, then that party waives
8 the right to be reimbursed for that expense. Upon receipt of a timely-forwarded proof
9 of payment of an unreimbursed medical expense, the receiving party has thirty (30)
10 days to reimburse the paying party one-half of the expense or to object to the expense.

11 If the receiving party does not either object to the expense or reimburse the paying party
12 for half of the expense, then that party is subject to sanctions for contempt of court.

13 14. The parties should alternate claiming the tax deduction for the child.


14 15. Plaintiff should be awarded attorney's fees and costs.

15 **WHEREFORE**, Plaintiff prays for a Judgment as follows:

16 1. That the Court grant the relief requested in this Complaint; and

17 2. For such other relief as the Court finds to be just and proper.

18 Dated this 8 day of September, 2016

19 
20 LAW OFFICES OF F. PETER JAMES

21 F. Peter James, Esq.

22 Nevada Bar No. 10091

3821 W. Charleston Blvd., Suite 250

23 Las Vegas, Nevada 89102

702-256-0087

24 Counsel for Plaintiff

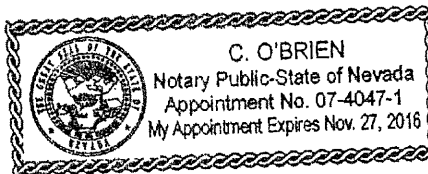
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1. That I am the Plaintiff in the above entitled action.
2. That I have read the foregoing *Complaint for Custody* and know the contents thereof.
3. That the same is true of my own knowledge, except for those matters therein contained stated upon information and belief, and as to those matters I believe them to be true.
4. Those factual averments contained in said document are incorporated herein as if set forth in full.
5. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

WILLIAM DIMONACO

COUNTY OF CLARK

SS:



COBnier

NOTARY PUBLIC in and for said County and State

“EXHIBIT 2”


CLERK OF THE COURT

1 ANSC
2 STEVEN M. ALTIG, ESQ.
3 Nevada Bar No. 006879
4 Adras & Altig, Attorneys at Law
5 601 S. Seventh Street
6 Las Vegas, Nevada 89101
7 (702) 385-7227
8 Email: steven@adraslaw.com
9 Attorney for Defendant/Counterclaimant

7 DISTRICT COURT
8 FAMILY DIVISION
9 CLARK COUNTY, NEVADA

9 WILLIAM DIMONACO,) CASE NO. D-16-539340-C
10) DEPT. NO. Q
11 Plaintiff/Counterdefendant,)
12)
13 vs.)
14)
15 ADRIANA DAVINA FERRANDO,)
16)
17 Defendant/Counterclaimant.)
18)

16 ANSWER TO COMPLAINT FOR CUSTODY
17 AND COUNTERCLAIM

18 COMES NOW, Defendant/Counterclaimant, ADRIANA DAVINA FERRANDO,
19 [hereinafter, Defendant], by and through her attorney, STEVEN M. ALTIG, ESQ., and for her
20 Answer to the Complaint for Custody on file herein, hereby admits, denies and alleges as
21 follows:
22

- 23 1. Answering Paragraphs 1, 2, 3, 4, 6, 12, and 13 of the Complaint on file herein this
24 answering Defendant hereby admits each and every allegation contained therein.
25 2. Answering Paragraphs 7, 8, 9, 10, 11, 14, and 15 of the Complaint on file herein
26 this answering Defendant hereby denies each and every allegation contained therein.
27
28

3. Answering Paragraph 5 of the Complaint on file herein this answering Defendant hereby denies that the Plaintiff has held himself out to the world as the child's natural father and the Defendant hereby admits each and every other allegation contained therein.

WHEREFORE, Defendant prays Plaintiff take nothing by way of her Complaint on file herein.

COUNTERCLAIM

COMES NOW Defendant/Counterclaimant, ADRIANA DAVINA FERRANDO [hereinafter, Defendant], by and through his attorney, STEVEN M. ALTIG, ESQ., and for her Counterclaim against Plaintiff/Counterdefendant, WILLIAM DIMONACO [hereinafter, Plaintiff] alleges as follows:

1. That for more than six (6) weeks immediately preceding the commencement of this action, Defendant has been physically present and domiciled in, and an actual bona fide resident of the County of Clark, State of Nevada.

2. That Plaintiff and Defendant were never married.

3. That there is one minor child born the issue of the parties hereto, to wit: GRAYSON ASHTON DiMonaco-Ferrando born August 12, 2014.

4. That the Plaintiff is the natural father of the parties' minor child.

5. That the Plaintiff has emotionally abandoned the minor child and the Defendant hereby reserves the right to amend this court action to include an allegation for the termination of the Plaintiff's parental rights.

6. That the Defendant is a fit and proper parent to be awarded sole legal custody of the parties' minor child.

7. That the Defendant is a fit and proper parent to be awarded primary physical custody of the parties' minor child subject to the Plaintiff's right of supervised visitation.

8. That child support should be set pursuant to Nevada law.

9. That the Plaintiff should be compelled to pay child support arrears in an amount to be determined by this Court.

1 10. That the Plaintiff should be required to maintain health insurance coverage for the
2 parties' minor child.

3 11. That the parties should share in any unreimbursed medical, dental, optical,
4 orthodontic, and mental health expenses pursuant to the 30/30 rule.

5 12. That the Defendant should be awarded the tax deduction for the child in each and
6 every year.

7 13. That there are expenses associated with the birth of the parties' minor child of
8 which the Plaintiff should be compelled to pay half as well as half of other expenses associated
9 with the child, including but not limited to a crib, clothing, car seats, and other associated
10 expenses for which the Plaintiff agreed to pay.

11 14. That the Plaintiff requested that the Defendant file paperwork to terminate the
12 Plaintiff's parental rights. That the Defendant requested assurances that the Plaintiff wished to
13 pursue that course of action before retaining the services of an attorney. The Plaintiff assured the
14 Defendant that he wished to pursue that course of action and again requested that the Defendant
15 retain the services of an attorney to this end. The Defendant did in fact retain the services of an
16 attorney to prepare the termination of parental rights paperwork. The Plaintiff then refused to
17 sign the paperwork and initiated this legal action. The Plaintiff should be compelled to
18 reimburse the Defendant her fees and costs for the termination action in the approximate amount
19 of \$2,500.00.

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ADRIANA DAVINA FERRANDO, being first duly sworn according to law, deposes
and says:

Executed this 3 day of October, 2016.

2016.


ADRIANA DAVINA FERRANDO

On this 3rd day of October, 2016.

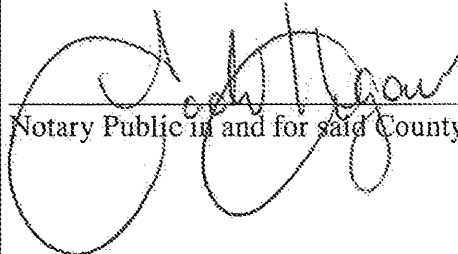


Notary Public in and for said County and State

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On this 3rd day of October, 2016, before me, the undersigned Notary Public in and for said County and State, personally appeared, ADRIANA DAVINA FERRANDO, known to me to be the person described in and who executed the foregoing Answer to Complaint and Counterclaim and who acknowledged to me that she did so freely and voluntarily and for the uses and purposes therein stated.

State of Nevada, County of Clark

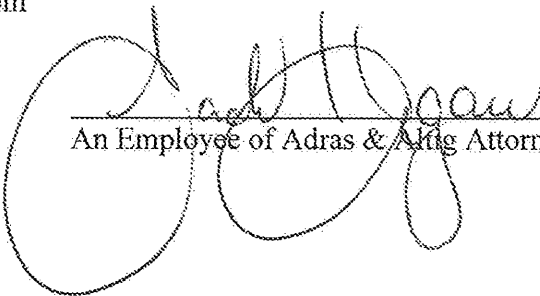


Notary Public in and for said County and State

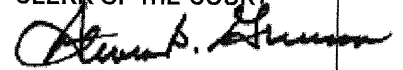
CERTIFICATE OF E-SERVICE

I hereby certify that I am an employee of Adras & Altig Attorneys at Law, and that on the 4th day of October, 2016, I elected to E-SERVE a true and correct filed stamped copy of the foregoing Answer to Complaint for Custody and Counterclaim, to the following:

F. Peter James, Esq.
Email: peter@peterjameslaw.com
Attorney for Plaintiff


An Employee of Adras & Altig Attorneys at Law

“EXHIBIT 3”



1 **MOT**

2 FINE|CARMAN|PRICE

3 Michael P. Carman, Esq.

4 Nevada Bar No. 07639

5 8965 S. Pecos Road, Suite 9

6 Henderson, NV 89074

7 702.384.8900

8 mike@fcpfamilylaw.com

9 Counsel for Adriana Ferrando

10 **DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 WILLIAM DIMONACO,

14 Plaintiff,

15 vs.

16 ADRIANA DAVINA FERRANDO,

17 Defendant.

Case No.: D-16-539340-C

Dept. No.: E

Date and time of hearing:

Oral Argument Requested:

☐ YES / ☒ NO

18 **MOTION TO ALLOW PARENTAL AFTERSCHOOL CARE**

19 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE
20 CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR
21 RESPONSE WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO
FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN FOURTEEN (14) DAYS
OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING
GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

22 COMES NOW, Defendant, Adriana Ferrando ("Adriana"), appearing
23 with her counsel, Michael P. Carman, Esq., of FINE|CARMAN|PRICE, and
24 hereby submits this Motion to Allow Parental Afterschool Care.

25 This motion is made and based upon the pleadings and papers on file
26 herein, the points and authorities submitted herewith, Adriana's declaration

1 attached hereto, and such other evidence and argument as may be brought
2 before the Court at the hearing of this matter.

3 As set forth below, Adriana hereby asks the Court grant to her the
4 following relief:

- 5 1. For an Order permitting her to serve as Grayson's after
6 school caregiver while Will is at work;
- 7 2. For an award of attorney's fees and costs; and
- 8 3. For any and all other relief deemed warranted by the Court
at the time of the hearing of this matter.

9 DATED: August 28, 2019.

FINE | CARMAN | PRICE



Michael P. Carman, Esq.
Nevada Bar No. 07639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
mike@fcpfamilylaw.com
Counsel for Adriana Ferrando

POINTS AND AUTHORITIES

I.

BACKGROUND

As this Court is aware, the parties to this action were never married and have one child together, to wit: Grayson Ashton DiMonaco-Ferrando ("Grayson") born August 12, 2014.

Relevant to this motion, Judge Duckworth previously recognized the benefits of Grayson spending time with Adriana on Wednesday afternoons when Will was unable to care for him due to work obligations in the parties' Decree of Custody dated November 9, 2017.

Subsequent to the entry of the Decree of Divorce, Adriana actually served as Grayson's afterschool caregiver on all of Will's days from June 21, 2017, until such time as his unhappiness with the Court's prior child support orders caused Will to restrict Adriana's time in March of 2018. Despite such past issues, Adriana believed that Will would be upset over the Court's child support orders and – with Grayson attending school with his brother right down the street from Adriana's home –would allow her to provide afterschool care to Grayson while he worked and allow her to supervise Grayson's homework on his days.

After the most recent Court hearing, however, things suddenly changed as Will indicated that he was considering using Adriana's

1 husband's ex – who has been openly hostile to Adriana for years – as an
2 afterschool caregiver. Upon Adriana objecting to Will's selection of an
3 openly hostile person as a caregiver for Grayson rather than his mother, Will
4 indicated that he would be enrolling Grayson in afterschool care and would
5 not permit him to be with Adriana and his brother after school.

6 With Will having voiced his objection to Grayson spending time with
7 Adriana and his brother after school as he has allowed in the past,
8 undersigned counsel reached out to his attorney in accordance with EDCR
9 5.501 on August 6, 2019. In response, Will's counsel advised as follows:

10 With regard Adriana's request, my client appreciates her
11 offer, however, he prefers to utilize his own after school
12 care (given it should be his prerogative to administer his
custodial time with Grayson as he sees fit).

13 In response, undersigned counsel asked Will to reconsider his
14 position as follows:

15 I cannot comprehend why your client believes that [Gray]
16 be better off in school aftercare than with his mother. We,
17 obviously, disagree, and believe that Adriana should have
priority over third-party care (with the clear understanding
that such time is still Will's custodial time of course).

18 Rather than explaining a basis for Will's position, his counsel asserted
19 as follows:

20 Why your client cannot "comprehend" how Will could
21 presume such parental autonomy should continue is
unclear to me. If you would like to return to court, lets do
so. However, I am hoping that perhaps you can advise your

1 client that a traditional joint custodial relationship wherein
2 she enjoys, supports and nurtures Grayson during her
3 custodial time and allows Will the independence to do the
4 same during his.

5 With the parties clearly having different perspectives as to what is in
6 Grayson's best interests, Adriana files this motion in the hope that she will
7 be allowed to provide afterschool care for Grayson and supervise his
8 homework afterschool.

9 **II.**

10 **EDCR 5.501 CERTIFICATE**

11 As set forth above, undersigned counsel reached out to Will's counsel
12 prior to the filing of this motion in accordance with EDCR 5.501 and the
13 parties were unable to resolve this matter.

14 **III.**

15 **ARGUMENT**

16 **A. Adriana Requests That She Be Allowed to Care for Grayson After**
17 **School Rather Than Him Being Placed in Third Party Care**

18 NRS 125C.0045(1)(a) states as follows:

19 During the pendency of the action, at the final hearing or at
20 any time thereafter during the minority of the child, make
21 such an order for the custody, care, education,
maintenance and support of the minor child as appears in
his or her best interest.

The custodial preferences set forth in NRS 125C.0035 generally
recognizes a public policy that – in making custody determinations – parents

1 should generally receive custody over third parties. The prior orders of this
2 Court gave some deference to that policy in the parties' prior custodial
3 orders when it awarded Adriana time after school on Wednesday
4 afternoons.

5 Particularly relevant to the present dispute between the parties, is that
6 – regardless of the timeshare set forth in the parties' Decree – Will
7 recognized Adriana's after school care of Grayson to be in his best interests
8 from June 21, 2017 until March of 2018 when he suddenly decided to revoke
9 his permission because he was upset about the Court's prior child support
10 determination in this case. Adriana asserts that Will's prior revocation of her
11 afterschool care for Grayson was not in Grayson's best interests and was
12 merely done out of spite.

13 With Will having previously suggested that a hostile party serve as
14 Grayson's afterschool caregiver, and with Will not providing Adriana any
15 explanation as to why he thinks that Grayson would be better off in
16 Champions after school care than in her care, she believes that his present
17 objection is also being made out of spite and would be detrimental to
18 Grayson. To the extent that Will has voiced that he believes her request to
19 have been an affront to his "parental autonomy" Adriana assures that this
20 request is in no way being made to gain a custodial advantage in this case,
21 and is merely being made because she genuinely believes that Grayson

1 should be with a parent (and with his brother) after school while Will is
 2 unavailable, and that a parent should supervise his homework rather than
 3 Champions care.

4 Adriana requests that this Court recognize the public policy that after
 5 school placement with a parent is preferred over a child being "parked" in
 6 third-party afterschool care, and asserts that it is in Grayson's best interests
 7 to have his homework supervised by Adriana after school, and for him to
 8 enjoy after school time with his family when Will is not available to care for
 9 him.

10 **C. Adriana Requests that she be Awarded Attorney's Fees and Costs**

11 NRS 18.010 states as follows:

12 In addition to the cases where an allowance is authorized
 13 by specific statute, the court may make an allowance of
 attorney's fees to a prevailing party:

14 (a) When he has not recovered more than \$20,000;
 15 or

16 (b) Without regard to the recovery sought, when the
 17 court finds that the claim, counterclaim, cross-claim
 18 or third-party complaint or defense of the opposing
 19 party was brought or maintained without reasonable
 20 ground or to harass the prevailing party. The court
 21 shall liberally construe the provisions of this
 paragraph in favor of awarding attorney's fees in all
 appropriate situations. It is the intent of the
 Legislature that the court award attorney's fees
 pursuant to this paragraph and impose sanctions
 pursuant to Rule 11 of the Nevada Rules of Civil
 Procedure in all appropriate situations to punish for

1 and deter frivolous or vexatious claims and defenses
2 because such claims and defenses overburden
3 limited judicial resources, hinder the timely resolution
4 of meritorious claims and increase the costs of
engaging in business and providing professional
services to the public.

5 Furthermore, EDCR 7.60(b) states as follows:

6 The court may, after notice and an opportunity to be heard,
7 impose upon an attorney or a party any and all sanctions
8 which may, under the facts of the case, be reasonable,
including the imposition of fines, costs or attorney's fees
when an attorney or a party without just cause:

9 (1) Presents to the court a motion or an opposition
10 to a motion which is obviously frivolous, unnecessary
or unwarranted.

11 (2) Fails to prepare for a presentation.

12 (3) So multiplies the proceedings in a case as to
13 increase costs unreasonably and vexatiously.

14 (4) Fails or refuses to comply with these rules.

15 (5) Fails or refuses to comply with any order of a
judge of the court.

16 With no legitimate basis being articulated for denying Grayson the
17 opportunity to be with his family – rather than third party care – afterschool,
18 Adriana believes that Will's objections are being made in bad faith. Under
19 such circumstances, Adriana requests that Will be deemed responsible for
20 the attorney's fees that he has incurred in this action.
21

1 In regard to the factors set forth in Brunzell v. Golden Gate National
2 Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), undersigned counsel's
3 hourly rate of \$400.00 and the total amount of time incurred in fees was
4 reasonable under the circumstances of this case. Specifically, undersigned
5 counsel is an A/V rated attorney who has practiced since 1997, has
6 practiced primarily in the field of family law for over fourteen (14) years, and
7 is currently serving on the State Bar of Nevada's Family Law Executive
8 Council. It is hopeful that the Court will deem counsel's work in this matter
9 as more than adequate, both factually and legally, and that the Court will
10 recognize that counsel has diligently reviewed the applicable law, explored
11 the relevant facts, and properly applied one to the other.

12 ///

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21

CONCLUSION

As set forth below, Adriana hereby asks the Court grant to her the following relief:

1. For an Order permitting her to serve as Grayson's after school caregiver while Will is at work;
2. For an award of attorney's fees and costs; and
3. For any and all other relief deemed warranted by the Court at the time of the hearing of this matter.

DATED: August 28, 2019.

FINE | CARMAN | PRICE




Michael P. Carman, Esq.
Nevada Bar No. 07639
8965 S. Pecos Road, Suite 9
Henderson, NV 89074
702.384.8900
mike@fcpfamilylaw.com
Counsel for Adriana Ferrando

DECLARATION OF ADRIANA FERRANDO

STATE OF NEVADA)
) ss:
CLARK COUNTY)

I, Adriana Ferrando, pursuant to EDCR 2.21, hereby declare under penalty of perjury that I am the Plaintiff in the above-entitled action and have read the above and foregoing motion, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as for those matters, I believe them to be true.


Adriana Ferrando

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 28th day of August, 2019,

I caused the above and foregoing motion to be served as follows:

- ☒ Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

To the following attorney listed below at the address, email address, and/or facsimile number indicated below:

To the following addresses:

Matthew H. Friedman, Esq.
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
mfriedman@fordfriedmanlaw.com

Tracey McAuliff
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
tracy@fordfriedmanlaw.com

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Eddie Rueda
2200 Paseo Verde Parkway, Suite 350
Henderson, NV 89052
eddie@fordfriedmanlaw.com

Gary Segal, Esq.
2200 Paseo Verde Parkway, Suite 350
Henderson, NV 89052
gsegal@fordfriedmanlaw.com



Employee of FINE | CARMAN | PRICE

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

William Dimonaco
Plaintiff/Petitioner
v. Adriana Davina Ferrando
Defendant/Respondent

Case No. D-16-539340-C

Dept. E

MOTION/OPPOSITION
FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☒ \$25 The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ \$0 The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ \$129 The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ \$57 The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

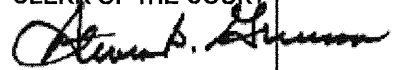
Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☐ \$0 ☒ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Defendant, Adriana Ferrando Date 8-28-19

Signature of Party or Preparer Rob [Signature]

“EXHIBIT 4”



OPPC

MATTHEW H. FRIEDMAN, ESQ.

Nevada Bar No.: 11571

FORD & FRIEDMAN

2200 Paseo Verde Parkway, Suite 350

Henderson, Nevada 89052

T: 702-476-2400 / F: 702-476-2333

mfriedman@fordfriedmanlaw.com

Attorney for Plaintiff

**DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA**

WILLIAM DIMONACO,

Plaintiff,

vs.

ADRIANA FERRANDO,

Defendant.

Case No.: D-16-539340-C

Department: E

Oral Argument Requested: YES

Date of Hearing: September 27, 2019

Time of Hearing: 3:00 a.m.

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO
ALLOW PARENTAL AFTERSCHOOL CARE; AND
COUNTERMOTION FOR THE CHILD TO BE ATTEND CHAMPIONS
AFTERSCHOOL LEARNING PROGRAM DURING PLAINTIFF'S
CUSTODIAL TIME, AND FOR ATTORNEY'S FEES AND COSTS**

COMES NOW Plaintiff, William DiMonaco (hereinafter referred to as "Will"), by and through his counsel of record, Matthew H. Friedman, Esq., of the law firm Ford & Friedman who hereby files this Opposition To Defendant's Motion to Allow Parental Afterschool Care; And Countermotion for the Child to Attend Champions Afterschool Learning Program During Plaintiff's


1 Custodial Time, And For Attorney's Fees And Costs, and requests that this
2 Honorable Court enter the following orders:

- 3 1. That Defendant's motion be denied in its entirety;
- 4
- 5 2. That the minor child be permitted to attend the Champions afterschool
6 learning program during Plaintiff's custodial time;
- 7
- 8 3. That Will be awarded his attorney's fees and costs for having to
9 oppose the instant motion; and
- 10
- 11 4. For any other relief this Court may deem necessary and proper.

12 This Opposition is based upon the following memorandum of points and
13 authorities, the papers and pleadings on file in this matter, and any oral argument
14 the Court may wish to hear.
15

16 DATED this 9 day of September, 2019.
17

18 **FORD & FRIEDMAN**

19
20 
21 MATTHEW H. FRIEDMAN, ESQ.
22 Nevada Bar No.: 11571
23 FORD & FRIEDMAN
24 2200 Paseo Verde Parkway, Suite 350
25 Henderson, Nevada 89052
26 T: 702-476-2400 / F: 702-476-2333
27 *Attorney for Plaintiff*
28

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1 pertinent facts so as to make it appear that Will has presented no reasonable
2 objection to her request and moreover that his intentions are predicated upon
3 years old financial orders.
4

5 As will be demonstrated expressly herein, Will's objection to Adriana
6 serving as the sole afterschool provider is multifaceted, soundly grounded in
7 both law and fact, and emanates from a holistic view of what he feels will be in
8 Grayson's best interest. As such, Will now seeks the intervention of this Court
9 in the hopes of stemming the flow of continued litigation by the issuance of
10 common sense orders which allow for each custodial parent, and more
11 importantly for Grayson, to continue to build and strengthen a cohesive home
12 life in each party's respective care. In essence, Will asks that this Court find
13 Grayson's best interests are served by allowing each party to exercise a
14 traditional joint custodial relationship. That is to say that Grayson benefits most
15 when he is afforded the love, support, and nurturing care of a cohesive familial
16 dynamic during each parent's custodial time free from unnecessary custodial
17 exchanges and the continued disruption of parental continuity sought by
18 Adriana.
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II.

OPPOSITION

**1. ADRIANA HAS FAILED TO MEET HER BURDEN FOR A
CHANGE IN THE CUSTODIAL ORDERS AND IS BARRED
FROM REQUESTING THE INSTANT RELIEF UNDER THE
DOCTRINE OF *RES JUDICATA*.**

NRS 125C.0045 allows for either party at any time to move for a modification of custody. When a party seeks a modification of the visitation schedule, such a request is considered to be a modification of the underlying custody order. *Wallace v. Wallace*, 112 Nev. 1015, 922 P.2d 541 (1996). Once a custody Order has been established, the moving party has the burden of proving that a requested modification is in the best interests of the child. *Truax v. Truax*, 110 Nev. 437, 438—39, 874 P.2d 10, 11 (1994); NRS 125C.0045(1)(a). Specifically, the Court requires the moving party to demonstrate a change of circumstance since the last custodial order such that the best interest of the child warrants the modification sought. *Id.* The Court has stated clearly that the doctrine of *res judicata* is still applicable to requests for a modification of a joint physical custody order. The test set forth in *Truax* and NRS 125.510(2) **should not be misconstrued as affording litigants the ability to continuously re-litigate the same issues based on a best interest standard.** The Nevada Supreme Court specifically addressed this point in

1 *Mosley v. Figliuzzi*, 113 Nev. 51, 930 P.2d 1110 (1997), wherein it was held
2 that even in cases where a party is seeking to modify a joint custody
3 arrangement, **some change in circumstances must have occurred since the**
4 **entry of the most recent order, especially where the last order is fairly new,**
5 based on principles of res judicata, which preclude a party from re-litigating an
6 issue previously resolved by the court. **[Emphasis added].**
7

8
9 Here, during the parties June 21, 2017 hearing, upon learning that Will
10 intended to deploy child care during his custodial time while he worked,
11 Adriana requested from the Court that she be allowed to exercise the right of
12 first refusal, stating that “until the child reaches school age” she would prefer
13 he be in her care in lieu of that of a third party. (see June 21, 2017 hearing
14 video at 14:45:55). Similar to the undersigned, Will’s former counsel
15 recognized Adriana’s preference. However, he voiced his concerns that
16 Adriana’s proposed relief was not only “ripe for controversy” but more
17 importantly, her request is “confusing to the child... and inhibits [Will’s] time
18 with the child and the child’s ability to find a home in [Will’s] household.”
19 (see June 21, 2017 hearing video at 14:44:30). All sentiments echoed by the
20 undersigned in his August 14, 2019 email to Adriana’s counsel. (see Exhibit
21 1).
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1 After carefully considering the parties' respective arguments, this Court
2 stated that it was "adverse to the right of first refusal [as] it invites too much
3 conflict" (*see* June 21, 2017 hearing video at 14:49:19) and found that it was in
4 Will's parental discretion to arrange care for the minor child during his
5 custodial time¹. Clearly then, despite the parties' hearing resolved the matter,
6 here, Adriana again seeks to have this Court grant her the same first right of
7 refusal she sought and was denied at the June 21, 2017 hearing. However, here,
8 Adriana has sought to utilize the façade of "afterschool care" to gloss over her
9 clear attempt to re-litigate and issue already decided.
10

11
12 It is also worth noting that at the time the issue was previously litigated,
13 Grayson was not school age and therefore the time at issue during each of
14 Will's custodial days was an entire work day. Currently at issue is a period of
15 maximally two (2) hours in after school care. This Court is well aware of the
16 enormity of custodial cases that would be impacted in the prospects of a parent
17 utilizing safe key or similar after school care was automatically deemed
18 contrary to the child's best interests.
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26 ¹ The Court was inclined to "adopt a hybrid" for Wednesdays, wherein although the day was
27 to be designated to Will, Defendant was permitted to maintain custody of Grayson until Will
28 was off of work.

1 **2. ADRIANA MISLEADS THIS COURT BY ALLEDGING WILL**
2 **FAILED TO EXPLAIN HIS OBJECTION TO ADRIANA**
3 **PERFORMING ALL AFTER SCHOOL CARE.**

4 *Adriana* has egregiously misrepresented the factual circumstances
5 surrounding the current dispute. Indeed, even her presentation of the parties'
6 respective communications regarding this issue, *Adriana's* "selective editing"
7 (while creative) eschews truth in favor of base sophistry. To claim Will
8 provided no "explanation" for his objection to *Adriana* providing all
9 afterschool care flies in the face of the plain – albeit intentionally omitted -
10 language of the undersigned's correspondence to opposing counsel. Indeed,
11 *Adriana* asserts to this Court the communication merely stated "rather than
12 explaining a basis for Will's position, [the undersigned] asserted 'Why your
13 client cannot "comprehend" how Will could presume such parental autonomy
14 should continue is unclear to me. If you would like to return to court, lets do
15 so.'" – indicating that there was no substantive basis for Will's objection, the
16 fact of the matter is, not only did the undersigned provide *Adriana* with a
17 reasonable objection to her request, but instead he provided *Adriana* with four
18 (4) reasonable objections. Indeed, the undersigned's correspondence
19 concerning *Adriana's* request plainly stated the following:

20 "With regard to the balance of your email concerning your inability to
21 comprehend why Will would object to your client performing all the
22 after school care for the child, I would remind you that the sort of "right
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1 of first refusal masquerading as child care" arrangement you are
2 demanding is often shot down by the Courts as it breeds conflict and
3 forces parents to interact more than they ought to **(and by extension**
4 **blurs the lines of custodial time/responsibility from the child's**
5 **perspective)**. By your logic, for the last several years, your client should
6 have been entitled to GRAYSON each and every hour wherein Will was
7 not physically available to be there himself. Indeed from a review of the
8 record your client requested exactly this from Judge Duckworth. As I
9 understand it, the Court allowed her to retain the child on Wednesdays
10 (if Will was working) but **expressly declined the balance of the**
11 **request** allowing Will to deploy child care as he saw fit. Why your
12 client cannot "comprehend" how Will could presume such parental
13 autonomy should continue is unclear to me. If you would like to return
14 to court, lets do so. However, I am hoping that perhaps you can advise
15 your client that a traditional joint custodial relationship wherein she
16 enjoys, supports and nurtures Grayson during her custodial time and
17 allows Will the independence to do the same during his [is in the child's
18 best interest]." (see Exhibit 1).

14 Specifically, the undersigned advised *Adriana*, that the main reasoning
15 for Will's objection is that such consistent custodial "ping pong" it blurs the
16 lines of custodial time and responsibility from Grayson's perspective.
17 Moreover, her request adds unnecessary custodial exchanges to an already
18 high conflict relationship. Indeed, Adriana's proposal would have Grayson
19 wake up in the morning at Will's home to be dropped off at school, to be
20 picked up at 3:15 p.m. and walked backed to Adriana's home, only to be
21 picked up a short while later (1.5 – 2 hours maximally) to travel back to Will's
22 home. Adriana would have Grayson follow this "routine" each and every day
23 of Will's custodial time. This will cause unnecessary confusion concerning
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1 parental roles (i.e. who is in charge, who's rules and routine should he
2 follow). Additionally it fails to allow Grayson to establish any true routine
3 while in the DiMonaco. In essence Adriana's proposed custodial arrangement
4 inhibits the child's ability to establish a sense of belonging and home in each
5 of the custodial parent's residences.
6

7
8 Moreover, while Adriana seeks to assure this Court that this request is
9 not her attempt to assert custodial advantage or dominance, her failure to
10 articulate any cohesive best interest analysis speaks otherwise. It appears that
11 rather than holistically examining all of the implications on Grayson's well-
12 being (both positive and negative) which will likely follow from her request,
13 her contemplation of the issue starts and ends with "will Grayson be with
14 me?" Indeed, the very notion of parental autonomy is such that it allows the
15 custodial parent to make decisions concerning the care of the child during
16 their respective custodial time. By allowing custodial parents the right to
17 arrange logistical care and parental routine within their household we
18 recognize that parents know best how to facilitate optimal conditions for their
19 children.
20

21
22 It should be noted that while Adriana seeks an order of this Court
23 compelling Will to utilize Adriana for all afterschool care, Will has never
24 objected to Adriana's frequent selection of the child's grandparents, other
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1 relatives, and/or family friends to care for Grayson during her custodial time.
2 In Will's mind these are the actions of a joint custodian and cooperative co-
3 parent. It appears equity would dictate Will be shown the same courtesy.
4

5 While Adriana makes claims that Will, out of spite, sought to have
6 Kristy (the mother of Grayson's stepbrother, Gage, and family friend) care for
7 Grayson, Will assures this Court "spite" was not a factor. Instead, the option
8 stemmed from Adriana's unwavering insistence that the time Grayson and
9 Gage share together be maximized, as well as his conflict free relationship
10 with Kristy. Indeed, the families regularly meet to allow the boys time
11 together, they attend birthday parties hosted by the other, and plan to attend
12 special events together. Contrary to what Adriana believes, Will does not
13 involve himself in the conflict between Kristy and Adriana or her husband.
14
15

16 Much more important, this issue has been over exaggerated by Adriana.
17 Will merely "suggested" the use of Kristy as caregiver in discussions with
18 Adriana. Immediately upon receiving her objection Will promptly dropped the
19 matter and the same was communicated to her counsel. (see Exhibit 1 at page
20 PLF 0001 and page PLF 0002).
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22

23 In addition to the burden Adriana's request would place on Grayson,
24 her request will add multiple additional in person exchanges to an already
25 (and by Adriana's own admission) high conflict relationship. Instead of
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1 allowing Grayson to continue on in the Champions Afterschool Learning
2 Program, which serves to benefit the child and further his education, Adriana
3 instead proposes Grayson be subjected to additional intense interactions
4 between the parties, while they exchange not only the child, but also clothing,
5 shoes, and backpacks. As explained by the undersigned in his August 14,
6 2019 email, this approach does not seem to consider Grayson's best interest
7 and instead, seems only to invite more conflict by causing the parties to
8 interact more than necessary.

12 It is not surprising that *Adriana* chose to withhold the forgoing
13 substantial and, more importantly, overwhelmingly reasonable objections to
14 her request to perform all afterschool care. This is likely due to the fact that
15 they raise substantial issues regarding the best interests of the child from a
16 holistic perspective and seek to look beyond Adriana's presumption that this
17 Court must place irrefutable preference upon the child being in her care.
18 Indeed, it is hard to ignore Adriana's "cherry picking" and even harder to not
19 infer it was done in a bad faith attempt to paint Will as a spiteful,
20 unreasonable parent only concerned with harming Adriana at all costs. It
21 stands to reason that *Adriana* knew that, had she presented the full context of
22 Will's responses to this Court, it would have served to underscore the lack of
23 merit in her request.

1 **3. REMOVING GRAYSON FROM THE “CHAMPIONS AFTER**
2 **SCHOOL LEARNING PROGRAM” TO ALLOW ADRIANA TO**
3 **PROVIDE AFTER SCHOOL CARE IS NOT IN THE CHILD’S**
4 **BEST INTERESTS.**

5 Presently, Grayson is enrolled in and thoroughly enjoying Champions –
6 the after school learning program offered at Somerset Academy. Despite
7 Adriana’s averment that Grayson is “parked” in third-party afterschool care,
8 Champions offers Grayson a continued learning experience each and every day
9 that he attends. By attending Champions, Grayson is able to explore his
10 interests in areas such as Science, Creative Arts, Math and Construction,
11 Library, and Puzzles and Game. It also helps to socialize Grayson and well as
12 works on his character development and discipline. (*see* Exhibit 2). Indeed it is
13 ironic that after only weeks ago extolling the quality and virtue of Somerset
14 Academy, now when it suits her purposes, Adriana is happy to reduce the
15 school’s significant, supplemental educational program as a meritless place to
16 “park” Grayson.

17 Additionally, while Champions is willing to assist with homework, at
18 Will’s request they refrain from doing so. Instead, Grayson, along with his
19 older sister, McKenna, share a nightly routine wherein they enjoy reading
20 together and completing assignments at home with Will and his significant
21 other, as a family. Adriana’s request essentially seeks to eviscerate this

1 significant family bonding time and the continued development of a strong and
2 lasting domestic culture within the DiMonaco household. Utilizing Champions
3 essentially maximizes the many educational tools at Grayson's disposal, and in
4 turn places him in a position to excel in his scholastic endeavors.
5

6 **4. ADRIANA FAILED TO FILE A FINANCIAL DISCLOSURE**
7 **FORM WITH THE COURT, AND THEREFORE HER MOTION**
8 **SHOULD BE DENIED**

9 EDCR 5.506 provides as follows:

10
11 “(a) Any motion for fees and allowances, temporary spousal support,
12 child support, exclusive possession of a community residence, or any
13 other matter involving the issue of money to be paid by a party must be
14 accompanied by an affidavit of financial condition describing the
15 financial condition and needs of the movant. The affidavit of financial
16 condition must be prepared on a form approved by the court. An
17 incomplete affidavit or the absence of the affidavit of financial condition
18 may be construed as an admission that the motion is not meritorious and
19 as cause for its denial. Attorney's fees and other sanctions may be
20 awarded for an untimely, fraudulent, or incomplete filing.”

21 EDCR 5.506 requires all parties to file a financial disclosure form with
22 the Court *prior* to requesting any financial orders, including a request for
23 attorney's fees or modification of child support. Where a party has failed to
24 comply with this requirement, the entirety of the Motion may be deemed
25 meritless. Similar to her Motion in July, Adriana's Motion once again contains
26 a request for financial relief, yet as of the date of this filing of this opposition,
27
28

1 Adriana has – once again – failed to file her financial disclosure form². As
2 such, any financial relief requested in her Motion summarily must be denied.
3 Although Will believes Adriana’s Motion is utterly lacking in merit in a
4 number of other ways, Adriana’s Motion can and should be denied on this
5 basis alone.
6

7 8 III.

9 COUNTERMOTION

10 11 1. THIS COURT HAS THE AUTHORITY TO MODIFY ORDERS TO 12 ALLOW WILL TO DEPLOY AFTERSCHOOL CARE AS HE 13 DEEMS APPROPRIATE DURING EACH OF HIS CUSTODIAL 14 DAYS

15 As stated above, once an order establishing joint physical custody has
16 been entered, the moving party has the burden of proving that a modification of
17 custody is in the best interests of the child. *See Truax v. Truax*, 110 Nev. 437,
18 438—39, 874 P.2d 10, 11 (1994); NRS 125C.0045(1)(a). The moving party
19 must demonstrate that there has been a change of circumstance since the last
20 custodial order such that the best interest of the child warrants the modification
21 sought. *Id.*
22
23
24

25
26 ² Notably, Defendant’s last (and only) financial disclosure form was filed with this Court on
27 November 2, 2016 – nearly three (3) years ago, yet she continues to file meritless Motions
28 containing request financial relief from this Court.

1 Here, since the last custodial order, Grayson has entered into a full day
2 Kindergarten curriculum. Conversely, at the time of the Court's June 21, 2017
3 Orders, Grayson was approaching three (3) years old and, despite Will's best
4 efforts, had been primarily cared for by Adriana. Upon being granted joint
5 physical custody, Will sought to establish a set routine with the minor child,
6 within his home. Given that Will does not have a spouse to support him and
7 allow him the luxury of being a stay at home parent, he advised the Court of his
8 intent to utilize third party care while he worked. While the Court noted its
9 dislike of the "right of first refusal" (relief sought by Adriana at the time), the
10 Court opted to give a limited "hybrid" of the same.
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15 Under the Court's Orders, while Wednesday was designated as Will's
16 custodial day, Adriana was permitted to maintain custody of the minor child
17 until Will was off of work in lieu of full day attendance at daycare. While not
18 counsel to Will at the time, it is the undersigned's belief that the Order was
19 made with the intent to avoid Grayson being picked up from Adriana
20 Wednesday morning only to be taken to daycare while Will was at work and to
21 allow Grayson to be in the care of a parent given the extended amount of time
22 he would have otherwise been at daycare. It seemed only reasonable and logical
23 that, once Grayson entered into a more traditional school setting – especially
24 given Adriana's previous assertions that her request was only "until the child
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1 reached school age” (*see* June 21, 2017 hearing video at 14:45:55), this caveat
2 would no longer be necessary and these high conflict parents would follow a
3 schedule that permitted all exchanges to occur at the child’s school – **effectively**
4 **eliminating all personal interactions between the parties.** Unfortunately,
5 following the start of the school year, Adriana insisted she be permitted to
6 maintain custody of Grayson on Wednesdays after school. Given that the
7 language in the Decree of Custody leaves room for ambiguity and, in an
8 abundance of caution, Will has not disturbed this arrangement. Instead, the
9 parties continue to unnecessarily exchange Grayson on Wednesdays at the
10 conclusion of Will’s work day, and Adriana now moves this Court for his
11 Thursdays and Fridays as well. Such actions by Adriana are all relevant to
12 consideration by the Court, as they negatively impact the best interest of the
13 child. *See* NRS 125C.0035(4).
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19 Indeed, on the past several Wednesdays where Adriana has performed
20 afterschool care, Adriana has sought to ignore and override Will’s role as a
21 parent. Despite Will’s simple and common sense request that Adriana leave
22 Grayson in his school uniform and that she not remove the day’s homework
23 assignments and papers from Grayson’s backpack, Adriana plainly refuses such
24 requests. Instead, she changes Grayson into “street clothes” and removes event
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1 notification slips/packets³, homework, study guides, books, and artwork so that
2 she may keep it for her home – despite her already retaining possession of all
3 artwork done on Monday’s and Tuesday’s (her custodial days). This serves only
4 to increase and prolong the parties’ interactions, as they must now
5 unnecessarily exchange clothing, shoes, and backpacks. It also deprives
6 Grayson of the important bonding experience of watching his father review,
7 enjoy and display the school work and artwork completed by Grayson during
8 his custodial time, help him study sight words, and practice his letters for the
9 week’s tests. Given that this is Grayson’s first year of school, there are many
10 milestones being reached and documented through his school work and such
11 events and years in Grayson’s life are well known to be particularly impactful
12 and informative. As a proud and devoted father, Will desires and Grayson
13 should be afforded the benefit of such tender parental interactions which will be
14 all but eliminated should Adriana get her way. Intentional or not, Adriana’s
15 request will clearly minimize Will’s role in Grayson’s life and inhibit his
16 abilities to be an active parent concerning Grayson’s school and education.
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23
24 ³ Due to Ms. Ferrando’s removing paperwork/fliers and refusing to share information with
25 Mr. DiMonaco, to date, he has been deprived the ability to attend the August 20, 2019 “snow
26 day” with Grayson as well as was not provided a link to the pledge page set up by Ms.
27 Ferrando for Grayson’s recent fundraiser. He instead had to request a new code and wait for
28 the same to be provided by the school so that he was able to access the page.

1 For these reasons, Will would request that this Court modify the current
2 order such that Adriana is no longer permitted to retain custody on
3 Wednesday's until Will is off work and that all exchanges occur at the minor
4 child's school.
5

6
7 **2. WILL SHOULD RECEIVE A COMPREHENSIVE AWARD OF**
8 **FEEES RELATED TO WORK REQUIRED TO OPPOSE THE**
9 **INSTANT MOTION**
10

11 NRS 18.010 allows for an award of attorney's fees where:
12

13 2. In addition to the cases where an allowance is authorized by
14 specific statute, the court may make an allowance of attorney's
15 fees to a prevailing party:

16 (a) When the prevailing party has not recovered more than
17 \$20,000; or

18 (b) Without regard to the recovery sought, when the court
19 finds that the claim, counterclaim, cross-claim or third-party
20 complaint or defense of the opposing party was brought or
21 maintained without reasonable ground or to harass the
22 prevailing party. The court shall liberally construe the provisions
23 of this paragraph in favor of awarding attorney's fees in all
24 appropriate situations. It is the intent of the Legislature that the
25 court award attorney's fees pursuant to this paragraph and impose
26 sanctions pursuant to Rule 11 of the Nevada Rules of Civil
27 Procedure in all appropriate situations to punish for and deter
28 frivolous or vexatious claims and defenses because such claims
and defenses overburden limited judicial resources, hinder the
timely resolution of meritorious claims and increase the costs of
engaging in business and providing professional services to the
public.

And EDCR 7.60 provides that:

1 b) The court may, after notice and an opportunity to be heard, impose
2 upon an attorney or a party any and all sanctions which may, under
3 the facts of the case, be reasonable, including the imposition of fines,
4 costs or attorney's fees when an attorney or a party without just
5 cause:

6 **1) Presents to the court a motion or an opposition to a motion,**
7 **which is obviously frivolous, unnecessary or unwarranted.**

8 **2) Fails to prepare for a presentation.**

9 **3) So multiplies the proceedings in a case as to increase costs**
10 **unreasonably and vexatiously.**

11 **4) Fails or refuses to comply with these rules.**

12 **5) Fails or refuses to comply with any order of a judge of the**
13 **court.**

14
15 Adriana has filed a motion with this Court rife with lies and
16 misrepresentations of facts concerning the parties' discussions. Specifically, she
17 has falsely alleged Will failed to provide any reasonable objection to her
18 request to maintain custody of Grayson while Will is at work. The instant
19 motion is rife with false and otherwise misleading arguments aimed toward
20 manipulating this Court into rendering a ruling inconsistent with Grayson's best
21 interests. Once again, Adriana's false representations and actions have forced
22 Will to incur additional attorney's fees and this Court to needlessly squander
23 precious judicial resources. Accordingly, Will should be fully reimbursed for
24 the attorney's fees and costs he has been forced to expend regarding the same.
25 Will requests leave of the Court to file a memorandum of fees and costs
26 pursuant to *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349 (1969) and
27 *Miller v. Wilfong*, 119 P.3d 727 (2005) for consideration by the Court. Will
28

1 further requests the ability to submit a proposed order awarding fees related to
2 this motion including an empty delimiter within which the Court may enter a
3 dollar amount for the award of any fees it deems necessary upon review of his
4 memorandum of fees and costs.
5

6 Pursuant to EDCR 5.506(f), while a new Financial Disclosure completed
7 by Will does not accompany his requests for attorney's fees relative to the
8 instant Opposition and Countermotion, Will asserts and assures this Court that
9 his Financial Disclosure filed on July 31, 2019 (just over one (1) month ago),
10 remains a true and correct illustration of his income and financial position.
11
12

13 DATED this 9 day of September, 2019.
14
15

16 **FORD & FRIEDMAN**

17
18
19 
MATTHEW H. FRIEDMAN, ESQ.

20 Nevada Bar No. 11571

21 FORD & FRIEDMAN

22 2200 Paseo Verde Parkway, Suite 350

23 Henderson, Nevada 89052

24 *Attorney for Plaintiff*
25
26
27
28

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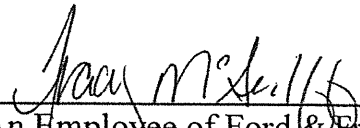
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Ford & Friedman and that on this 01 day of September, 2019, I caused the above and foregoing document entitled, **"Plaintiff's Opposition To Defendant's Motion To Allow Parental Afterschool Care; And Countermotion For The Child To Be Attend Champions Afterschool Learning Program During Plaintiff's Custodial Time, And For Attorney's Fees And Costs"** to be served as follows:

[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f) and NRCP 5(b)(2)(d) and Administrative Order 14-2 captioned, "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

To the person listed below at the address indicated below:

Michael P. Carman	Mike@FCPfamilylaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Robin Haddad	Reception@FCPfamilylaw.com
Dominique Hoskins	Paralegal@FCPfamilylaw.com
Missy Weber	Missy@FCPfamilylaw.com
<i>Attorney for Defendant</i>	


An Employee of Ford & Friedman

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

William DiMonaco

Plaintiff/Petitioner

v. Adriana Ferrando

Defendant/Respondent

Case No. D-16-539340-C

Dept. E

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

<input checked="" type="checkbox"/>	\$25	The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-		
<input type="checkbox"/>	\$0	The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
<input type="checkbox"/>		The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
<input type="checkbox"/>		The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
<input type="checkbox"/>		The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
<input type="checkbox"/>		Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

<input checked="" type="checkbox"/>	\$0	The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
<input checked="" type="checkbox"/>		The Motion/Opposition is being filed in a case that was not initiated by joint petition.
<input type="checkbox"/>		The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
-OR-		
<input type="checkbox"/>	\$129	The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-		
<input type="checkbox"/>	\$57	The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

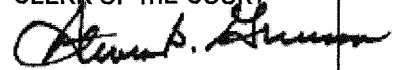
Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:											
<input type="checkbox"/>	\$0	<input checked="" type="checkbox"/>	\$25	<input type="checkbox"/>	\$57	<input type="checkbox"/>	\$82	<input type="checkbox"/>	\$129	<input type="checkbox"/>	\$154

Party filing Motion/Opposition: Ford & Friedman on behalf of Plaintiff Date 9/9/2019

Signature of Party or Preparer Jacy M. L. 1.16

“EXHIBIT 5”



1 **OPPC**
FINE|CARMAN|PRICE
2 Michael P. Carman, Esq.
Nevada Bar No. 07639
3 8965 S. Pecos Road, Suite 9
Henderson, NV 89074
4 702.384.8900
mike@fcpfamilylaw.com
5 Counsel for Adriana Ferrando

6 **DISTRICT COURT**
7 **FAMILY DIVISION**
8 **CLARK COUNTY, NEVADA**

9 WILLIAM DIMONACO,

10 Plaintiff,

11 vs.

12 ADRIANA DAVINA FERRANDO,

13 Defendant.

Case No.: D-16-539340-C

Dept. No.: E

Date and Time of Hearing:

September 26, 2019 @ 11 a.m.

14 **REPLY AND OPPOSITION**

15 COMES NOW, Defendant, Adriana Ferrando ("Adriana"), appearing
16 with her counsel, Michael P. Carman, Esq., of FINE|CARMAN|PRICE, and
17 hereby submits this Reply and Opposition in relation to her Motion to Allow
18 Parental Afterschool Care.

19 This motion is made and based upon the pleadings and papers on file
20 herein, the points and authorities submitted herewith, Adriana's declaration
21

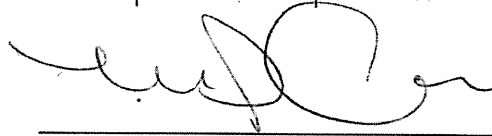
1 attached hereto, and such other evidence and argument as may be brought
2 before the Court at the hearing of this matter.

3 As set forth previously, Adriana hereby asks the Court grant to her the
4 following relief:

- 5 1. For and Order denying Will's countermotion;
- 6 2. For an Order permitting her to serve as Grayson's after
7 school caregiver while Will is at work;
- 8 3. For an award of attorney's fees and costs; and
- 9 4. For any and all other relief deemed warranted by the Court
10 at the time of the hearing of this matter.

DATED: September 19, 2019.

FINE | CARMAN | PRICE



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Counsel for Adriana Ferrando

POINTS AND AUTHORITIES

I.

REPLY AND OPPOSITION

As this Court is aware, the parties to this action were never married and have one child together, to wit: Grayson Ashton DiMonaco-Ferrando ("Grayson") born August 12, 2014.

A. Adriana is Not Asking for a Right of First Refusal

A "Right of First Refusal" is an order in which the Court requires a parent to notify the other when they are not available to provide child care for a period of time established by the Court and requires the parent to relinquish custody of their child to the other parent if they are available to provide care. Such rights tend to be problematic for many reasons. To begin, they rely upon the honesty of the custodial parent to acknowledge their unavailability, and, otherwise, require the non-custodial parent to monitor the whereabouts of the custodial parent. As a result, such orders can foster much conflict between untrusting parents. More problematic, such orders create a significant amount of uncertainty in the lives of children who are or must be carted back and forth between parents at the whim of work schedules.

Adriana is not asking for a right of first refusal, and is, instead, asking this Court to recognize that Grayson would benefit from being in the care of

his mother after school rather than being place in third-party after school care for hours on end.

B. Will's Parental Autonomy / Parental Continuity Argument Was Previously Rejected by the Court

In his prior communication, and in his Opposition, Will advocates for his right to parental autonomy and continuity, and, somehow, advocates a belief that he should have a right to place Grayson in school aftercare based upon Judge Duckworth's prior rejection of a four-hour right of first refusal. In advocating his views of parental rights, and attempting to blur the line between Adriana's present request to be Grayson's afterschool caregiver and a general four-hour right of first refusal, Will fails to acknowledge that Judge Duckworth *soundly* rejected his parental autonomy argument at the parties' prior hearing.

While the Court did acknowledge the potential harm to a child in additional exchanges when parties are in conflict and expose a child to conflict, Judge Duckworth negatively characterized Will's parental autonomy argument as an "issue of control" and expressed concerns about Will treating Grayson as "a piece of property," and expressed concern about Will's attitude that he "get[s] to kick that toy just as [he] wants to" during his time. See 14:47 on the video record. The Court specifically commented that "when we start treating the child as a possession – 'this is mine, this is

1 my toy, and if I want the toy to be in daycare' – that's where it becomes [a
2 problem]. See 14:48-14:50 on the video record.

3 While Judge Duckworth did reject the notion of a four-hour right of first
4 refusal based upon the amount of conflict between the parties at the time,
5 he specifically rejected Will's present parental autonomy argument, and
6 soundly criticized Will for not focusing on the best interest of Grayson in his
7 comments.

8 **C. Will's "Logistical" Arguments are Without Merit**

9 Will next argues that Adriana providing after school care will lead to
10 Grayson's exposure to conflict, and will require the exchanging of clothing,
11 shoes, and backpacks.

12 First, Adriana wholly disputes Will's assertion that the parties'
13 exchanges have been at all plagued with conflict, and is shocked that Will
14 would make such an allegations as she believes that they both have done
15 an excellent job shielding Grayson from parental conflict and have
16 successfully worked together to make such exchanges a happy event for
17 Grayson.

18 In regard to clothing, shoes, and backpacks, Adriana does not believe
19 that there is any material difference in the eyes of Grayson to him collecting
20 his items from a school after-care facility or from Adriana's home.

21

D. Will's Request to Modify the Court Orders is Contrary to Nevada Case Law and the Best Interests of Grayson

In his Countermotion, Will seeks unfettered authority to "deploy afterschool care as he deems appropriate" and seeks to eliminate Adriana's time with Grayson on Wednesday afternoons

While Will complains about Adriana not abiding by his "simple and common sense request" to not allow Grayson to change into more comfortable clothing after school, and complains of her removing items from Grayson's backpack and depriving Grayson of the "experience of watching his father review" papers and assist him with sight words, Adriana wholly denies that she has done anything other than work with Will so that Grayson is fully able to enjoy his relationship with both of his parents.

In relation to the selection of daycare providers, the parties have joint legal custody which allows them to have equal decision-making power regarding their children. Rivero v. Rivero, 216 P. 3d 213, 125 Nev. 410 (2009). When parents with joint legal custody are unable to agree upon a decision regarding their children they must seek the intervention of the Court and appear "'on an equal footing' to have the court decide what is in the best interest of the child." Id.

Adriana believes that the selection of daycare and childcare providers fall under the umbrella of joint legal custody, and that both parties should have

1 a say in who cares for their child. When a parent selects a caregiver who is
2 openly hostile toward the other parent of their child – as Will did when selecting
3 Adriana’s husband’s ex-wife as a potential caregiver and adding her to
4 Grayson’s school pick-up list – Adriana should have a right to object.¹

5 As Will has cited no legal authority or factual basis that would justify
6 giving him sole legal custody in regard to the selection of child care and
7 afterschool providers during his time, his request for unfettered decision-
8 making authority should be denied by this Court.

9 **E. Financial Disclosure Form**

10 Adriana’s motion clearly stated that she remains a stay-at-home
11 mother, and her income and overall financial situation has – obviously – not
12 materially changed since the filing of her prior FDF. In the event that the
13 Court authorizes the submission of a Memorandum of Fees, Adriana would
14 be happy to file a Financial Disclosure Form if the Court does not accept her
15 representation that her financial circumstances have not materially
16 changed, but would request that Will bear the attorney’s fees and costs
17 associated with it.

18
19 ¹ Will’s argument that he “does not involve himself in the conflict between
20 Kristy and Adriana or her husband” is particularly disingenuous as Kristy
21 has openly identified Will as a source of information that has led to conflict,
and Will’s significant other Tracey has been directly involved in Kristy’s
litigation through her employment with Mr. Friedman and has served a
conduit of involvement between the parties.

F. Attorney's Fee Considerations

NRS 18.010 states as follows:

In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

(a) When he has not recovered more than \$20,000;
or

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Furthermore, EDCR 7.60(b) states as follows:

The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

(1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.

(2) Fails to prepare for a presentation.

(3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

(4) Fails or refuses to comply with these rules.

(5) Fails or refuses to comply with any order of a judge of the court.

Adriana obviously disagrees that her motion is “rife with lies and misrepresentations of fact” and she continues to believe and assert that Will’s present objections are being made in bad faith. Further, Will’s present request for parental autonomy and unfettered authority to “deploy afterschool care as he deems appropriate” is not well grounded in law and fact.

In regard to the factors set forth in Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), undersigned counsel’s hourly rate of \$400.00 and the total amount of time incurred in fees was reasonable under the circumstances of this case. Specifically, undersigned counsel is an A/V rated attorney who has practiced since 1997, has practiced primarily in the field of family law for over fourteen (14) years, and is currently serving on the State Bar of Nevada’s Family Law Executive Council. It is hopeful that the Court will deem counsel’s work in this matter as more than adequate, both factually and legally, and that the Court will

1 recognize that counsel has diligently reviewed the applicable law, explored
2 the relevant facts, and properly applied one to the other.

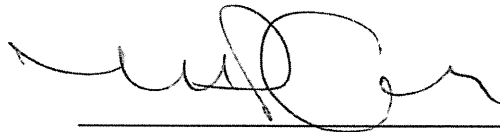
3 **CONCLUSION**

4 As set forth above, Adriana hereby asks the Court grant to her the
5 following relief:

- 6 1. For and Order denying Will's countermotion;
- 7 2. For an Order permitting her to serve as Grayson's after
8 school caregiver while Will is at work;
- 9 3. For an award of attorney's fees and costs; and
- 10 4. For any and all other relief deemed warranted by the Court at
11 the time of the hearing of this matter.

12 DATED: September 19, 2019.

13 FINE | CARMAN | PRICE



14 Michael P. Carman, Esq.
15 Nevada Bar No. 07639
16 8965 S. Pecos Road, Suite 9
17 Henderson, NV 89074
18 702.384.8900
19 mike@fcpfamilylaw.com
20 Counsel for Adriana Ferrando
21

DECLARATION OF ADRIANA FERRANDO

STATE OF NEVADA)
) ss:
CLARK COUNTY)

I, Adriana Ferrando, pursuant to EDCR 2.21, hereby declare under penalty of perjury that I am the Defendant in the above-entitled action and have read the above and foregoing motion, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as for those matters, I believe them to be true.


Adriana Ferrando

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 19th day of September, 2019, I caused the above and foregoing motion to be served as follows:

- ☒ Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

To the following attorney listed below at the address, email address, and/or facsimile number indicated below:

To the following addresses:

Matthew H. Friedman, Esq.
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
mfriedman@fordfriedmanlaw.com

Tracey McAuliff
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
tracy@fordfriedmanlaw.com

Eddie Rueda
2200 Paseo Verde Parkway, Suite 350
Henderson, NV 89052
eddie@fordfriedmanlaw.com

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Gary Segal, Esq.
2200 Paseo Verde Parkway, Suite 350
Henderson, NV 89052
gsegal@fordfriedmanlaw.com

Melody Zooley
Employee of FINE | CARMAN | PRICE

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

William Dimonaco
Plaintiff/Petitioner

v.
Adrianna Davina Ferrando
Defendant/Respondent

Case No. D-16-539340-C

Dept. E

MOTION/OPPOSITION
FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

☐ \$25 The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.

-OR-

☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:

☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.

☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.

☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.

☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:

☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.

☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.

-OR-

☐ \$129 The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ \$57 The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

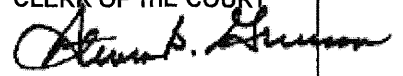
The total filing fee for the motion/opposition I am filing with this form is:

☒ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Adrianna Davina Ferrando Date 9/19/19

Signature of Party or Preparer Melody Zooley

“EXHIBIT 6”



ORD

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

William DiMonaco,
Plaintiff

v.

Adriana Ferrando,
Defendant

Case No.: ^{D-16-}~~16-D~~-539340-C

Dept.: E

Date: September 26, 2019

Time: 11:00 a.m.

ORDER

The parties were last before this Court for a hearing on September 26, 2019, where this Court heard Defendant's Motion to Allow Parental Afterschool Care and Defendant's Countermotion for the Child to Attend Champions Afterschool Learning Program on September 26, 2019. This Court took the matter under advisement so the Court could review Judge Duckworth's prior decision on a similar issue, which he heard on June 21, 2017, to attempt to maintain consistent decisions between the departments relating to this family. As such, this Court reviewed the video record of Judge Duckworth's decision, which was his attempt to create a hybrid situation in a similar situation.

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
☐ Judgment Reached by Trial

Trial Dispositions:
☐ Settled/Withdrawn
☐ Without Judicial Conf/Hrg
☒ With Judicial Conf/Hrg
☐ By ADR

1 This Court find's Judge Duckworth's analysis persuasive, while
2
3 considering the policy that the children's best interests are better served
4 when they spend time with their parents than in daycare or with a third party
5 and Plaintiff's argument for consistency for the child. Additionally,
6 Defendant's physical proximity to the school is a consideration. The
7 information concerning the Plaintiff's proposed after-school care is not
8 persuasive as it appears to be an afterschool day-care and not preferable to a
9 parent. Considering all that, and making a best interest analysis, the issue
10 shall be resolved as follows:
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14 The child shall be cared for by Defendant, rather than any third-
15 party care-giver, on Plaintiff's custodial school days, from afterschool
16 until Plaintiff gets off from work.
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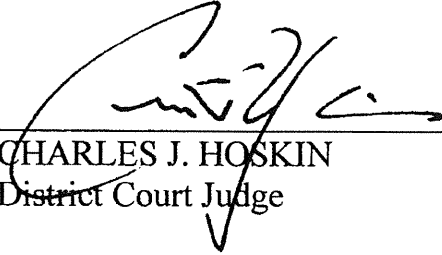
19 All other aspects of existing court orders, not in conflict with
20 this decision, shall remain in full force and effect.
21

22 The additional time allotted to Defendant as a result of this decision
23 shall not be considered as a basis to modify custody.
24

25 As the Court understands the positions of each party, it cannot find
26 bad faith on either side. Such eliminates a basis for attorney's fees pursuant
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1 to NRS 18.010. Each side shall bear their own fees and costs for this
2
3 hearing.

4
5 IT IS SO ORDERED on October 2, 2019

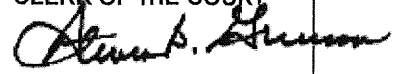
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9 CHARLES J. HOSKIN
District Court Judge
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“EXHIBIT 7”

1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4 * * *

Electronically Filed
10/7/2019 1:59 PM
Steven D. Grierson
CLERK OF THE COURT




5 William Eugene DiMonaco,
6 Plaintiff.
7 vs.
8 Adriana Davina Ferrando,
9 Defendant.

Case No: D-16-539340-C
Department E

10 NOTICE OF ENTRY OF ORDER

11
12 Please take notice that an ORDER FROM HEARING was entered in
13 the foregoing action and the following is a true and correct copy
14 thereof.

15
16 Dated: October 07, 2019

17
18 
19 Cassie Burns
20 Judicial Executive Assistant
21 Department E

22 CERTIFICATE OF SERVICE

23 I hereby certify that on the above file stamp date:

24 ☐ I placed a copy of the foregoing NOTICE OF ENTRY OF ORDER
25 in the appropriate attorney folder located in the Clerk of the Court's
26 Office of:


27 ☒ I mailed, via first-class mail, postage fully prepaid, the foregoing
28 NOTICE OF ENTRY OF ORDER to:

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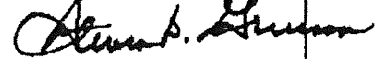
NEO

Matthew H. Friedman, Esq.
2200 Paseo Verde Parkway Suite 350
Henderson, NV 89052

Michael P. Carman, Esq.
8965 S Pecos RD STE 9
Henderson, NV 89074



Cassie Burns
Judicial Executive Assistant
Department E



ORD

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

William DiMonaco,
Plaintiff
v.

Case No.: ^{D-16-}~~16-D~~-539340-C
Dept.: E

Adriana Ferrando,
Defendant

Date: September 26, 2019
Time: 11:00 a.m.

ORDER

The parties were last before this Court for a hearing on September 26, 2019, where this Court heard Defendant's Motion to Allow Parental Afterschool Care and Defendant's Countermotion for the Child to Attend Champions Afterschool Learning Program on September 26, 2019. This Court took the matter under advisement so the Court could review Judge Duckworth's prior decision on a similar issue, which he heard on June 21, 2017, to attempt to maintain consistent decisions between the departments relating to this family. As such, this Court reviewed the video record of Judge Duckworth's decision, which was his attempt to create a hybrid situation in a similar situation.

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
☐ Judgment Reached by Trial

Non-Trial Dispositions:
☐ Settled/Withdrawn
☐ Without Judicial Conf/Hrg
☒ With Judicial Conf/Hrg
☐ By ADR

1 This Court find's Judge Duckworth's analysis persuasive, while
2
3 considering the policy that the children's best interests are better served
4 when they spend time with their parents than in daycare or with a third party
5 and Plaintiff's argument for consistency for the child. Additionally,
6 Defendant's physical proximity to the school is a consideration. The
7 information concerning the Plaintiff's proposed after-school care is not
8 persuasive as it appears to be an afterschool day-care and not preferable to a
9 parent. Considering all that, and making a best interest analysis, the issue
10 shall be resolved as follows:
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14 The child shall be cared for by Defendant, rather than any third-
15 party care-giver, on Plaintiff's custodial school days, from afterschool
16 until Plaintiff gets off from work.
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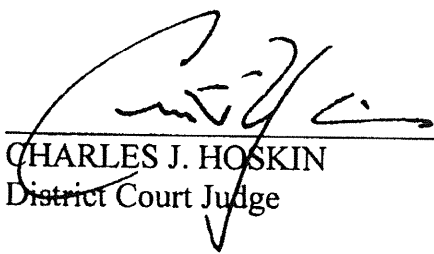
19 All other aspects of existing court orders, not in conflict with
20 this decision, shall remain in full force and effect.
21

22 The additional time allotted to Defendant as a result of this decision
23 shall not be considered as a basis to modify custody.
24

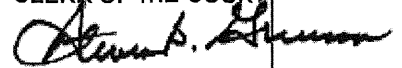
25 As the Court understands the positions of each party, it cannot find
26 bad faith on either side. Such eliminates a basis for attorney's fees pursuant
27
28

1 to NRS 18.010. Each side shall bear their own fees and costs for this
2
3 hearing.

4
5 IT IS SO ORDERED on October 2, 2019

6
7
8 
9 CHARLES J. HOSKIN
District Court Judge

“EXHIBIT 8”



1 **MOT**

2 **MATTHEW H. FRIEDMAN, ESQ.**

3 Nevada Bar No.: 11571

4 **FORD & FRIEDMAN**

5 2200 Paseo Verde Parkway, Suite 350

6 Henderson, Nevada 89052

7 T: 702-476-2400 / F: 702-476-2333

8 mfriedman@fordfriedmanlaw.com

9 *Attorney for Plaintiff*

10 **DISTRICT COURT, FAMILY DIVISION**
11 **CLARK COUNTY, NEVADA**

12 **WILLIAM DIMONACO,**

13 Plaintiff,

14 vs.

15 **ADRIANA FERRANDO,**

16 Defendant.

Case No.: D-16-539340-C

Department: E

Oral Argument Requested: YES

Date of Hearing:

Time of Hearing:

17
18 **PLAINTIFF'S MOTION FOR A TRIAL, TO AMEND JUDGMENT AND**
19 **FOR RELATED RELIEF**

20 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS
21 MOTION/COUNTERMOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE
22 UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR
23 RECEIPT OF THIS MOTION/COUNTERMOTION. FAILURE TO FILE A WRITTEN RESPONSE
24 WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS
25 MOTION/COUNTERMOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED
26 BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

27 COMES NOW Plaintiff, William DiMonaco (hereinafter referred to as
28 "Will"), by and through his counsel of record, Matthew H. Friedman, Esq., of
the law firm Ford & Friedman who hereby files this Plaintiff's Motion for a

1 Trial, to Amend Judgment, and for Related Relief and requests that this
2 Honorable Court enter the following orders:

- 3 1. That this Court stay its Orders Following the September 26, 2019
4 Hearing, filed herein on October 7, 2019;
- 5 2. That an evidentiary hearing be set regarding the issues raised in the
6 papers regarding the afterschool learning program and third party care
7 of the subject minor child during Will's custodial time;
8
- 9 3. That, upon conducting the evidentiary hearing, this Court amend its
10 Orders Following the September 26, 2019 Hearing, filed herein on
11 October 7, 2019 and render specific findings and orders which
12 comport to the evidence admitted into the record; and
13
- 14 4. For any other relief this Court may deem necessary and proper.
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25 . . .

1 This Motion is based upon the following memorandum of points and
2 authorities, the papers and pleadings on file in this matter, and any oral argument
3 the Court may wish to hear.
4

5 DATED this 1 day of November, 2019.
6

7 **FORD & FRIEDMAN**

8 
9
10 MATTHEW H. FRIEDMAN, ESQ.
11 Nevada Bar No.: 11571
12 FORD & FRIEDMAN
13 2200 Paseo Verde Parkway, Suite 350
14 Henderson, Nevada 89052
15 T: 702-476-2400 / F: 702-476-2333
16 *Attorney for Plaintiff*
17
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1 completed his work day. Indeed, in the parties' discussions regarding school
2 selection prior to the filing of Defendant's July 23, 2019 Motion, she expressly
3 advertised to Will, the existence and quality of this afterschool learning program
4 as a "selling point" of the school.
5

6 A motion hearing was held regarding Defendant's requested relief and
7 Will's Opposition/countermotion to the same on September 26, 2019. At no time
8 during the September 26, 2019 proceedings was sworn testimony taken nor was
9 any evidence introduced into the record. Following the hearing, this Court took
10 the matter under advisement stating it would render its decision upon whether the
11 child would attend an appropriate afterschool learning program during Will's
12 custodial time or if the minor child would instead be placed with Defendant
13 during Will's custodial time while he is working.
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18 On October 7, 2019, this Court entered its Order (hereinafter, "Order")
19 requiring the minor child to be cared for by Defendant "rather than any third-party
20 care-giver" on Will's custodial school days.¹ The substance of this Order contains
21 several procedural and substantive irregularities which require
22 amendment/reconsideration.² Accordingly, the instant motion follows.
23
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27 ¹ Order, p. 2, ll. 14-17.

28 ² Will notes it would be impractical to send correspondence pursuant to EDCR 5.501 as the relief requested herein is entirely procedural, and, even if an agreement had been reached

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II.

DISCUSSION

NRCP 59 provides:

(a) In General.

(1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues--and to any party--for any of the following causes or grounds materially affecting the substantial rights of the moving party:

(A) irregularity in the proceedings of the court, jury, master, or adverse party or in any order of the court or master, or any abuse of discretion by which either party was prevented from having a fair trial;

(B) misconduct of the jury or prevailing party;

(C) accident or surprise that ordinary prudence could not have guarded against;

(D) newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial;

(E) manifest disregard by the jury of the instructions of the court;

(F) excessive damages appearing to have been given under the influence of passion or prejudice; or

(G) error in law occurring at the trial and objected to by the party making the motion.

(2) *Further Action After a Nonjury Trial.* On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time to File a Motion for a New Trial. A motion for a new trial must be filed no later than 28 days after service of written notice of entry of judgment.

pursuant to EDCR 5.501 regarding the issues raised herein, the parties are without power to force this Court via stipulation to hold an evidentiary hearing.

1 (c) **Time to Serve Affidavits.** When a motion for a new trial is based on
2 affidavits, they must be filed with the motion. The opposing party has 14
3 days after being served to file opposing affidavits. The court may permit
reply affidavits.

4 (d) **New Trial on the Court's Initiative or for Reasons Not in the**
5 **Motion.** No later than 28 days after service of written notice of entry of
6 judgment, the court, on its own, may issue an order to show cause why a
7 new trial should not be granted for any reason that would justify granting
8 one on a party's motion. After giving the parties notice and the
9 opportunity to be heard, the court may grant a party's timely motion for a
new trial for a reason not stated in the motion. In either event, the court
must specify the reasons in its order.

10 (e) **Motion to Alter or Amend a Judgment.** A motion to alter or amend
11 a judgment must be filed no later than 28 days after service of written
notice of entry of judgment.

12 (f) **No Extensions of Time.** The 28-day time periods specified in this
rule cannot be extended under Rule 6(b).

13 NRCP 52(b) provides:
14

15 (b) **Amended or Additional Findings.** On a party's motion filed no
16 later than 28 days after service of written notice of entry of judgment, the
17 court may amend its findings — or make additional findings — and may
18 amend the judgment accordingly. The time for filing the motion cannot
19 be extended under Rule 6(b). The motion may accompany a motion for a
new trial under Rule 59.

20
21 **A. THE COURT WAS REQUIRED TO CONDUCT AN**
22 **EVIDENTIARY HEARING PRIOR TO ENTERING AN**
23 **ORDER PERMENNATLY MODIFYING THE PARTIES'**
CUSTODIAL RIGHTS.

24 It is well settled that any Court ordered permanent change to a parent's
25 custodial time or control amounts to governmental interference with the
26
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1 fundamental right of parentage.³ In recognition of the sanctity of such
2 fundamental rights, prior to making a permanent change to a custodial schedule,
3 the Court is required to conduct an evidentiary proceeding to afford the parties
4 adequate due process by and through the opportunity to testify, to confront
5 witnesses, and to present and rebut evidence.⁴

6
7
8 The instant Order clearly served to permanently increase the amount of
9 custodial time allotted to Defendant.⁵ In apparent recognition of the impact upon
10 Will's custodial time resulting from the Order, this Court expressly included
11 language providing that the additional time allotted to Defendant would not be
12 considered in any future request to modify custody. Nonetheless, despite issuing
13 an order resulting in a permanent increase in Defendant's custodial time, the Court
14 ignored its duty under Nevada law to first conduct an evidentiary hearing.

15
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17 The Order further runs afoul of Nevada law by prohibiting Will from
18 utilizing **any third-party caregiver** during his custodial school days. In this way,
19 the Court's Orders infringe upon Will's parental rights in a manner which extends
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23 ³ *Gordon v. Geiger*, 133 Nev. 542, 546, 402 P.3d 671, 674 (2017). *See also Troxel v.*
24 *Granville*, 530 U.S. 57, 66, 120 S.Ct. 2054, 2060 (2000) ("[T]he Due Process Clause of the
25 Fourteenth Amendment protects the fundamental right of parents to make decisions
concerning the care, custody, and control of their children.") (plurality opinion).

26 ⁴ *Wallace v. Wallace*, 112 Nev. 1015, 1020, 922 P.2d 541, 544 (1996) (Noting that prior to
27 modifying a custody award, a parent must be afforded a full and fair hearing with the ability
to disprove evidence, and further noting a Court's modification of a custody award must be
supported by factual evidence.)

28 ⁵ Order, p. 2, ll. 22-24.

1 well beyond the relief sought by Defendant – who merely sought custodial
2 preference over Will’s desired after school care. Such a *sua sponte* expansion of
3 the relief sought by Defendant is severely problematic as Will was not afforded
4 adequate notice that his rights to utilize any third-party caregiver (even a relative)
5 were placed in jeopardy as a result of Defendant’s moving paperwork.⁶ As such,
6 given that Will was not afforded adequate notice that these additional custodial
7 rights were placed at stake in the litigation, he was deprived of the opportunity to
8 prepare to defend the same and was consequently denied the requisite due process
9 of law owed him.
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13 Will clearly demonstrated adequate cause to hold an evidentiary hearing.
14 To demonstrate such cause, a party “must show that (1) the facts are relevant
15 to the grounds for modification; and (2) the evidence is not merely cumulative or
16 impeaching.”⁷ In its order issued on October 7, 2019, the Court plainly stated it
17 “...[could not] find bad faith on either side” regarding the issues raised within the
18 papers filed leading to the hearing held on September 26, 2019. The Court’s
19 pronouncements in this regard can only be read to confirm that Will raised
20 relevant, good faith arguments in support of his request to maintain the minor
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25 ⁶ Defendant’s moving papers make it clear the choice before the Court was whether the
26 minor child would be placed in afterschool care or be placed with Defendant during Will’s
27 custodial school days. *See* Defendant’s Motion, filed August 28, 2019, p. 4, ll. 2-5; p. 6, ll.
28 14-16; p. 7, ll. 4-9. *See also* Defendant’s Reply, filed September 19, 2019, p. 3, ll. 20 – p. 4,
ll. 2; p. 6, ll. 12-15.

⁷ *Bautista v. Picone*, 134 Nev. 334, 337, 419 P.3d 157, 160 (2018).

1 child in an appropriate afterschool learning program. Moreover, even a cursory
2 review of Will's opposition reveals that the offers of proof and arguments
3 contained therein were hardly cumulative, but rather touched upon the various
4 best interest factors this Court is mandated to consider in rendering any decision
5 on a permanent custody determination.
6

7
8 Pursuant to NRCP 59(a)(1)(A), a party may seek a new trial if an
9 irregularity within an order of the Court or an abuse of discretion materially
10 affected that party's substantial rights.⁸ Here, Will's fundamental rights were
11 materially affected by the Order as it resulted in a permanent decrease in his
12 custodial time and a one-sided blanket prohibition on his use of any third-party
13 care giver. Further, the Order lacked best interest findings supporting the
14 permanent decrease in Will's custodial time and infringement upon his
15 fundamental parental rights. Moreover, as the Court failed to hold an evidentiary
16 hearing there is an insufficient record from which to discern the factual basis in
17 support of the Court's best interest analysis. As a result, the Court's underlying
18 factual analysis and reasoning is wholly concealed from Will and he is left to
19 contend with a few short sentences of conclusory summation preceding the
20 Court's ruling. The failure of an Order to make specific best interest findings
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27 ⁸ Will alternately seeks for an evidentiary hearing to be set and the Order accordingly
28 amended upon the taking of evidence pursuant to NRCP 59(a)(2).

1 when making a permanent change to a custodial schedule constitutes an abuse of
2 discretion.⁹

3
4 Based on the foregoing, Will requests that the Order issued on October 7,
5 2019 be stayed¹⁰ and that this matter be set for an evidentiary hearing. Moreover,
6 Will requests that this Court constrain the issues to be adjudicated at the
7 evidentiary hearing to those actually raised within the moving papers filed in
8 relation to the Order.¹¹

10
11 **B. THE ORDER FAILS TO CONTAIN A PROPER**
12 **APPLICATION OF THE BEST INTEREST FACTORS.**

13 As noted, the Order served to permanently increase the amount of custodial
14 time allotted to Defendant while limiting Will's ability to exercise custody and
15 control during his custodial time.¹² Despite making a permanent custody
16 modification that decreases Will's custodial time and inequitably restricts Will's
17 fundamental parental rights, the Order failed to specifically apply relevant best
18 interest factors explaining how this permanent custodial modification was in the
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23 ⁹ *Lewis v. Lewis*, 132 Nev. 453, 459-60, 373 P.3d 878, 882 (2016) (Noting it is an abuse of
24 discretion for the District Court to fail to set forth specific findings as to each best interest
factor when making a custodial modification).

25 ¹⁰ NRCP 62(b)(2) and (3). In light of the lack of due process afforded Will, his fundamental
rights will be detrimentally impacted absent a stay of the Order.

26 ¹¹ *Wiese v. Granata*, 110 Nev. 1410, 1412, 887 P.2d 744, 745-45 (1994)

27 (“[D]ue process requires that notice be given before a party's substantial rights are
affected.”).

28 ¹² Order, p. 2, ll. 22-24.

1 minor child's best interests.¹³ Admittedly, while the Order does contain a
2 conclusory statement that the Court engaged in a best interest analysis, it is wholly
3 bereft of any specific findings pertaining to any of the relevant factors outlined in
4 NRS 125C.0035(4).¹⁴
5

6 Accordingly, following the Court conducting an evidentiary hearing
7 regarding the afterschool care issue, Will requests that the Order be amended
8 pursuant to NRCP 52(b) so as to contain specific findings and an application of
9 said findings to all relevant factors outlined in NRS 125C.0035(4).
10
11

12 **C. THE ORDER IS UNCLEAR AS TO WHAT POLICY DEEMS**
13 **IT IN A CHILD'S BEST INTERESTS TO SPEND TIME WITH**
14 **A PARENT RATHER THAN ANY THIRD-PARTY CARE**
15 **PROVIDER.**

16 In its Order issued on October 7, 2019, the Court expressly states its
17 reliance upon "the policy that the children's best interests are better served when
18 they spend time with their parents than in daycare or with a third party..."¹⁵
19
20

21 ¹³ *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) ("Although this court
22 reviews a district court's discretionary determinations deferentially, deference is not owed to
23 legal error, or to findings so conclusory they may mask legal error...")(Internal citations and
24 quotes omitted). *See also Lewis v. Lewis*, 132 Nev. 453, 460, 373 P.3d 878, 882 (2016)
25 ("[T]he district court abused its discretion by failing to set forth specific findings as to all of
[the NRS 125C.0035(4)] factors in its determination of the child's best interest during a
modification of custody.").

26 ¹⁴ Will notes the importance of providing detailed findings regarding the best interest factors
27 when making a custodial modification was recently emphasized in a periodical widely
28 circulated among Nevada attorneys. Hon. Charles J. Hoskin, *Big Picture Approach to*
Family Law Appeals, NEVADA LAWYER, November, 2019 Issue at p. 8.

¹⁵ Order, p. 2, ll. 1-6.

1 Given the paucity of much else in the way of express findings or analysis, it
2 appears the Court relied heavily upon this undefined policy as its for the Order.

3
4 With exception of the Court's vague reference to this "policy," the Court
5 declines to reference any applicable legal authority mandating that a child's best
6 interest is always served by spending time with a parent over any third party. The
7 analysis utilized within the Order is perplexing given Nevada's clearly stated
8 legislative policy for parents to share the rights and responsibilities of child
9 rearing as indicated in NRS 125C.001. Surely, such parental rights and
10 responsibilities extend to a parent's ability to designate an appropriate person to
11 care for a minor child while that parent is working during their custodial time.
12 Unilaterally prohibiting one (and notably only one) parent from facilitating
13 contact between the minor child and the child's relatives (potential third-party
14 caregivers) during a parent's custodial time seems to undercut the legislative
15 intent of ensuring children form strong parental bonds and continuing
16 relationships.¹⁶ Further, Nevada case law clearly contemplates, that, within the
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24 ¹⁶ The ability of a parent to facilitate contact between a minor child and the child's relatives
25 during that parent's custodial time also goes toward certain best interest factors (e.g., NRS
26 125C.0035(4)(g)), as creating strong ties between a child and his relatives can serve to
27 positively promote the child's developmental and emotional needs. This provides additional
28 support to Will's position that an evidentiary hearing was required prior to the Court entering
an Order that severely restricts Will's ability to afford the minor child contact with relatives
during Will's custodial school days.

1 confines of a joint physical custody arrangement a parent should be free to permit
2 relatives or appropriate third-party caregivers to care for the minor child.¹⁷

3 Candidly, the undersigned's review of Nevada custody and support statutes
4 reveals no stated policy of presumption the Court's should always place a child in
5 the care of a parent over any third party without conducting a suitably thorough
6 best interest analysis. Indeed, this notion of absolute irrefutable parental deference
7 is directly at odds with the express terms of Nevada statutes. For example, NRS
8 125C.050 only exists because the Nevada Legislature determined that there are
9 situations wherein the child's best interests dictate that a third party should have
10 custodial time with a minor child, even over a parent's objection to the same.
11 Similarly, the child support deviation factors implicitly provide acceptance for a
12 parent's use of childcare services during that parent's custodial time.¹⁸

13
14
15 In sum, the best interest analysis which ought properly to have been
16 performed and documented herein is a detailed, fact specific analysis aimed at
17 assisting jurists to reach custodial determinations that serve the best interests of
18 the particular child at issue.¹⁹ The Court's blanket application of a "policy" which
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24 ¹⁷ *Rivero v. Rivero*, 125 Nev. 410, 427, 216 P.3d 213, 225 (2009) ("The district court should
25 not focus on, for example, *the exact number of hours the child was in the care of the*
26 *parent*, whether the child was sleeping, or *whether the child was in the care of a third-party*
27 *caregiver or spent time with a friend or relative* during the period of time in question.")
(Emphasis added).

28 ¹⁸ See NRS 125B.080(9)(b).

¹⁹ *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015).

1 makes the conclusory assumption that a biological parent is always preferred to
2 any third-party, irrespective of the factual circumstances, makes it difficult to
3 understand how this Court could have conducted the required individualized
4 analysis of the best interest factors before ordering such a prohibition on Will's
5 parental rights during his custodial time.
6

7
8 **D. THE COURT'S ORDER FAILS TO PROVIDE A BASIS FOR**
9 **ISSUING AN ORDER WHICH RESTRICTS WILL'S**
10 **PARENTAL AUTONOMY WHILE PLACING NO SUCH**
11 **RESTRICTION ON DEFENDANT IN THE SAME**
12 **CIRCUMSTANCES.**

13 The Order provides that the minor child will be cared for by Defendant over
14 any other third party caregiver on Will's custodial school days, from afterschool
15 until Will gets off from work.²⁰ However, the Court declined to even render this
16 order so that Will would have additional custodial time when Defendant is unable
17 to personally care for the minor child on her custodial school days.
18

19 The unequal application of this provision of the Order, coupled with a lack
20 of findings providing the basis for the same, causes the order to run afoul of the
21 mandate outlined in NRS 125C.0035(2). Here, without indicating a basis, the
22 aforementioned provisions of the Order apply only to grant Defendant additional
23 custodial time while failing to grant Will additional custodial time under the same
24 circumstances. Further, as the only distinction regarding this issue apparent in the
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28 ²⁰ Order, p. 2, ll. 14-17.

1 Order is the sex of the parties, Will is left with the only logical conclusion - that
2 the order does not grant Will additional custodial time because he is the minor
3 child's father rather than the child's mother.
4

5 Accordingly, upon this Court conducting an evidentiary hearing regarding
6 the afterschool issue, Will seeks amendment to the Order pursuant to NRCP 52(b)
7 so as to clarify the basis for the unequal application of the aforementioned orders.
8

9 **III.**

10 **CONCLUSION**

11
12 For the foregoing reasons, Plaintiff, William DiMonaco, prays for an order
13 commanding the following:
14

- 15 1. That this Court stay its Orders Following the September 26, 2019
16 Hearing, filed herein on October 7, 2019;
- 17 2. That an evidentiary hearing be set regarding the issues raised in the
18 papers regarding the afterschool learning program and third party care
19 of the subject minor child during Will's custodial time;
20
- 21 3. That, upon conducting the evidentiary hearing, this Court amend its
22 Orders Following the September 26, 2019 Hearing, filed herein on
23 October 7, 2019 and render specific findings and orders which
24 comport to the evidence admitted into the record; and
25
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28

1 4. For any other relief this Court may deem necessary and proper.

2 DATED this 1 day of November, 2019.

3
4
5 **FORD & FRIEDMAN**

6 

7
8 MATTHEW H. FRIEDMAN, ESQ.

9 Nevada Bar No.: 11571

10 FORD & FRIEDMAN

11 2200 Paseo Verde Parkway, Suite 350

12 Henderson, Nevada 89052

13 *Attorney for Plaintiff*

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VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, WILLIAM DIMONACO, being first duly sworn, deposes and says:

That I am the Plaintiff in the instant action; that I have read the foregoing
“Plaintiff’s Motion for a Trial, to Amend Judgment, and for Related Relief” and
know the contents thereof; that the same is true of my own knowledge, except for
those matters therein contained stated upon information and belief and, as to those
matters, I believe them to be true.

DATED this 10 day of October, 2019.

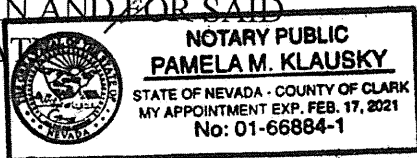


WILLIAM DIMONACO

SUBSCRIBED and SWORN TO before me
this 30th day of October, 2019 by William DiMonaco.



NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE



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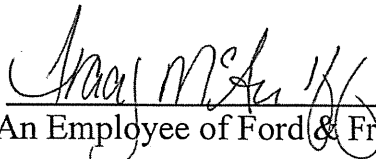
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Ford & Friedman and that on this 1 day of November, 2019, I caused the above and foregoing document entitled, **"Plaintiff's Motion for a Trial, to Amend Judgment, and for Related Relief"** to be served as follows:

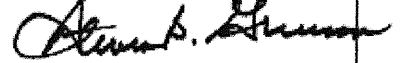
[X] Pursuant to EDCR 8.05(a), EDCR 8.05(f) and NRCP 5(b)(2)(d) and Administrative Order 14-2 captioned, "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

To the person listed below at the address indicated below:

Michael P. Carman	Mike@FCPfamilylaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Robin Haddad	Reception@FCPfamilylaw.com
Dominique Hoskins	Paralegal@FCPFamilylaw.com
Missy Weber	Missy@FCPfamilylaw.com
<i>Attorney for Defendant</i>	


An Employee of Ford & Friedman

“EXHIBIT 9”



1 **OPPC**

2 FINE|CARMAN|PRICE

3 Michael P. Carman, Esq.

4 Nevada Bar No. 07639

5 8965 S. Pecos Road, Suite 9

6 Henderson, NV 89074

7 702.384.8900

8 mike@fcpfamilylaw.com

9 Counsel for Adriana Ferrando

10 **DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

13 WILLIAM DIMONACO,

14 Plaintiff,

15 vs.

16 ADRIANA DAVINA FERRANDO,

17 Defendant.

Case No.: D-16-539340-C

Dept. No.: E

Date and time of hearing:

December 5, 2019 @ 9:00 a.m.

18 **OPPOSITION AND COUNTERMOTION**

19 COMES NOW, Defendant, Adriana Ferrando ("Adriana"), appearing
20 with her counsel, Michael P. Carman, Esq., of FINE|CARMAN|PRICE, and
21 hereby submits this Opposition and Countermotion.

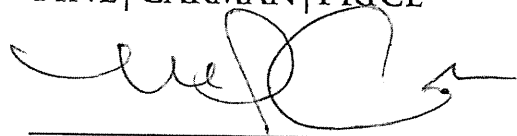
This Opposition and Countermotion is made and based upon the
pleadings and papers on file herein, the points and authorities submitted
herewith, and such other evidence and argument as may be brought before
the Court at the hearing of this matter.

1 As set forth below, Adriana hereby asks the Court grant to her the
2 following relief:

- 3 1. For an Order denying Will's motion;
- 4 2. For an award of attorney's fees and costs; and
- 5 3. For any and all other relief deemed warranted by the
6 Court at the time of the hearing of this matter.

7 DATED: November 20, 2019.

8 FINE | CARMAN | PRICE



9
10 Michael P. Carman, Esq.
11 Nevada Bar No. 07639
12 8965 S. Pecos Road, Suite 9
13 Henderson, NV 89074
14 702.384.8900
15 mike@fcpfamilylaw.com
16 Counsel for Adriana Ferrando
17
18
19
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21

POINTS AND AUTHORITIES

I.

BACKGROUND

As this Court is aware, the parties to this action were never married and have one child together, to wit: Grayson Ashton DiMonaco-Ferrando ("Grayson") born August 12, 2014.

Relevant to this motion, Judge Duckworth previously recognized the benefits of Grayson spending time with Adriana on Wednesday afternoons when Will was unable to care for him due to work obligations in the parties' Decree of Custody dated November 9, 2017.

Subsequent to the entry of the Decree of Divorce, Adriana actually served as Grayson's afterschool caregiver on all of Will's days from June 21, 2017, until such time as his unhappiness with the Court's prior child support orders caused Will to restrict Adriana's time in March of 2018. Despite such past issues, Adriana believed that Will would be upset over the Court's child support orders and – with Grayson attending school with his brother right down the street from Adriana's home – would allow her to provide afterschool care to Grayson while he worked and allow her to supervise Grayson's homework on his days.

After the most recent Court hearing, however, things suddenly changed as Will indicated that he was considering using Adriana's

1 husband's ex – who has been openly hostile to Adriana for years – as an
2 afterschool caregiver. Upon Adriana objecting to Will's selection of an
3 openly hostile person as a caregiver for Grayson rather than his mother, Will
4 indicated that he would be enrolling Grayson in afterschool care and would
5 not permit him to be with Adriana and his brother after school.

6 With the parties clearly having different perspectives as to what is in
7 Grayson's best interests, Adriana filed her Motion to Allow Parental
8 Afterschool Care on August 28, 2019, and a motion hearing was conducted
9 on September 26, 2019. The only material fact in dispute based upon the
10 arguments of counsel at the time, was counsel's differing recitations as to
11 what occurred at the prior hearing before Judge Duckworth.

12 After hearing all of the arguments set forth by Will's counsel at the
13 hearing, the Court indicated that the Court would take the matter under
14 advisement to review the disputed recitations as to what occurred at the
15 parties' prior hearing and would render a decision based upon the various
16 offers of proof set forth at the hearing after reviewing the prior proceedings
17 before the Court. *No objection was made to the Court rendering its decision*
18 *without an evidentiary hearing at that time.*

19 As it indicated it would, the Court rendered a written decision
20 September 26, 2019, after its review of the video record from the parties'
21 prior hearing before Judge Duckworth. After considering the arguments of

1 the parties, and after reviewing the video record from the prior hearing, the
2 Court concluded that the minor child's best interests would be better served
3 by spending time with a parent rather than spending time in daycare or with
4 a third party, and determined that – in considering Will's arguments about
5 the quality of his selected daycare facility – daycare is simply not preferable
6 to a parent.

7 **II.**

8 **OPPOSITON**

9 **A. Will's NRCP 59 Argument is Without Merit**

10 In his motion, Will asserts that he should be afforded NRCP 59 relief
11 based upon his assertion that the Court "modified" custody, "materially
12 affected" his fundamental rights, and "permanent[ly] decrease[d]" his
13 custodial time without a hearing.

14 Will's argument fails to recognize that Judge Duckworth previously
15 recognized that parental placement is preferred over daycare and granted
16 Adriana the right to care for Grayson after school in the past. While the
17 amount of time in Adriana's care has changed as a result of circumstances,
18 this Court's order maintains the custodial status quo and does not materially
19 affect Will's rights in any way.

20 Contrary to Will's assertion that the court failed to make a "best
21 interest findings", the Court specifically found that Grayson's best interests

1 were served by being in the care of a parent after school rather than being
2 placed in third-party daycare. Such parental placement is consistent with
3 the principals set forth in NRS 125C.004 which specifically favors a child
4 being in the custodial care of a parent, and provides a parent superior rights
5 to a third-party caregiver.

6 With the matter being decided largely as matter of law after viewing
7 Will's arguments in their most favorable light and clearly determining such
8 arguments insufficient to support the placement of Grayson in daycare
9 rather than his mother, it is difficult to understand Will's present argument.
10 With Will specifically indicating that he wants such an evidentiary hearing to
11 be limited to argument "actually raised within the moving papers" – which
12 were already considered by the Court – Will's present argument seems
13 particularly disingenuous.

14 As set forth previously, Will's assertion that he has a right to select
15 whomever he wants to care for the children is not supported by Nevada law,
16 which – under the auspice of joint legal custody – provides that both parties
17 have an equal right to make decisions regarding the care, custody, and
18 control of their children. See Rivero v. Rivero, 216 P. 3d 213, 125 Nev. 410
19 (2009).

20 In the end, Will has not asserted any irregularity in the proceedings,
21 any misconduct, any accident or surprise, any newly discovered evidence,

1 or error in the law that he objected to which would allow him to seek NRCP
2 59 relief, and his motion should be summarily denied by this Court. Further
3 Adriana requests permission to seek an award of attorney's fees in
4 accordance with NRCP 54.

5 **CONCLUSION**

6 As set forth above, Adriana hereby asks the Court grant to her the
7 following relief:

- 8 1. For an Order denying Will's motion;
9 2. For an award of attorney's fees and costs; and
10 3. For any and all other relief deemed warranted by the
11 Court at the time of the hearing of this matter.

12 DATED: November 20, 2019.

13 FINE | CARMAN | PRICE

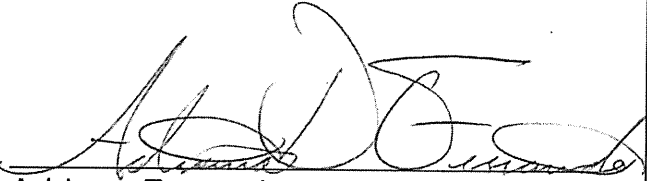
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15 Michael P. Carman, Esq.
16 Nevada Bar No. 07639
17 8965 S. Pecos Road, Suite 9
18 Henderson, NV 89074
19 702.384.8900
20 mike@fcpfamilylaw.com
21 Counsel for Adriana Ferrando

DECLARATION OF ADRIANA FERRANDO

STATE OF NEVADA)
) ss:
CLARK COUNTY)

I, Adriana Ferrando, pursuant to EDCR 2.21, hereby declare under penalty of perjury that I am the Defendant in the above-entitled action and have read the above and foregoing motion, know the contents thereof, and that the same is true of my own knowledge, except for those matters therein stated on information and belief, and as for those matters, I believe them to be true.


Adriana Ferrando

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this 20th day of November, 2019, I caused the above and foregoing Opposition to be served as follows:

- ☒ Pursuant to EDCR 8.05(a), EDCR 8.05(f), NRCP 5(b)(2)(D) and Administrative Order 14-2 captioned "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system
- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile, by duly executed consent for service by electronic means.

To the following attorney listed below at the address, email address, and/or facsimile number indicated below:

To the following addresses:

Matthew H. Friedman, Esq.
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
mfriedman@fordfriedmanlaw.com

Tracey McAuliff
2200 Paseo Verde Parkway, Suite 350
Henderson, NV, 89052
tracy@fordfriedmanlaw.com

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Gary Segal, Esq.
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gsegal@fordfriedmanlaw.com



Employee of FINE | CARMAN | PRICE

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

WILLIAM DIMONACO,
Plaintiff,

v.

ADRIANA DAVINA FERRANDO,
Defendant.

CASE NO.: D-16-539340-C

DEPT. NO.: E

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ \$25 The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on.
 - ☐ Other Excluded Motion (must specify).

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ \$0 The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
- ☐ \$129 The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order. -OR-
- ☐ \$57 The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

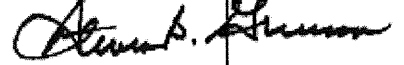
☒\$0 ☐\$25 ☐\$57 ☐\$82 ☐\$129 ☐\$154

Party filing Motion/Opposition: ADRIANA FERRANDO Date: November 20, 2019

Signature of Party or Preparer

Melody Tooley

“EXHIBIT 10”



1 **RPLY**

2 MATTHEW H. FRIEDMAN, ESQ.

3 Nevada Bar No.: 11571

4 **FORD & FRIEDMAN**

5 2200 Paseo Verde Parkway, Suite 350

6 Henderson, Nevada 89052

7 T: 702-476-2400 / F: 702-476-2333

8 mfriedman@fordfriedmanlaw.com

9 *Attorney for Plaintiff*

10 **DISTRICT COURT, FAMILY DIVISION**
11 **CLARK COUNTY, NEVADA**

12 WILLIAM DIMONACO,

13 Plaintiff,

14 vs.

15 ADRIANA FERRANDO,

16 Defendant.

Case No.: D-16-539340-C

Department: E

Oral Argument Requested: YES

Date of Hearing: December 18, 2019

Time of Hearing: 10:00 a.m.

17 **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO**
18 **PLAINTIFF'S MOTION FOR A TRIAL, TO AMEND JUDGMENT AND**
19 **FOR RELATED RELIEF AND OPPOSITION TO DEFENDANT'S**
20 **COUNTERMOTION FOR ATTORNEY'S FEES**

21 COMES NOW Plaintiff, William DiMonaco (hereinafter referred to as
22 "Will"), by and through his counsel of record, Matthew H. Friedman, Esq., of the
23 law firm Ford & Friedman who hereby files this Reply to Defendant's Opposition
24 to Plaintiff's Motion for a Trial, to Amend Judgment, and for Related Relief and
Counter-motion for Attorney's Fees.

1 This Reply is made and based upon the attached Points and Authorities, all
2 pleadings and papers on file herein and is made in good faith and not for
3 purposes of delay in resolving this matter.

4 DATED this 13 day of December, 2019.

6 **FORD & FRIEDMAN**

7 */s/ Matthew H. Friedman, Esq.*

8 **MATTHEW H. FRIEDMAN, ESQ.**

9 Nevada Bar No.: 11571

10 2200 Paseo Verde Pkwy., Ste. 350

11 Henderson, Nevada 89052

12 *Attorneys for Plaintiff*

I.

POINTS AND AUTHORITIES

Plaintiff William DiMonaco (hereinafter, “Will”), and Defendant, Adriana Ferrando (hereinafter, “Defendant”), were never married, but share one minor child born the issue of their relationship, to wit: Grayson Ashton DiMonaco-Ferrando (hereinafter, “minor child” or “Grayson”), born August 12, 2014, age five (5) years.

After motion practice by the parties, on October 7, 2019, this Court entered its Order (hereinafter, “Order”) requiring the minor child to be cared for by Defendant “rather than any third-party care-giver” on Will’s custodial school days.¹ Given that the substance of the Order contained several procedural and substantive irregularities which required amendment/reconsideration, on Will filed his timely Motion for a Trial, to Amend Judgment and for Related Relief on November 1, 2019.

Subsequently, (despite having been due on or before November 14, 2019), Defendant filed her Opposition and Countermotion on November 20, 2019 at 3:26 p.m.² Defendant’s instant Opposition and Countermotion (hereinafter,

¹ Order, p. 2, ll. 14-17.

² As a result of her untimely filing, counsel for Defendant provided Will an extension of time to file this Reply. Thereafter, the undersigned agreed to Defendant’s request for a brief continuance

1 “Opposition”) fails to substantially address Will’s detailed arguments
2 demonstrating that Nevada law as well as Will’s fundamental, substantive, and
3 procedural due process rights require this Court to hold an evidentiary hearing
4 before modifying the parties’ custodial orders as it relates to Will’s custodial
5 time. Instead, Defendant merely recycles the arguments previously set forth in
6 the underlying pleadings concerning these matters. As such, this Court should
7 conduct an appropriate evidentiary proceeding wherein it can properly weigh
8 evidence germane to these matters and, thereafter, craft an appropriate amended
9 order which comports to the evidence properly before it.
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13 For the sake of judicial economy, the facts and procedural history as
14 detailed in Will’s initial Motion are incorporated herein by reference.
15 Accordingly, Will now addresses each averment within Defendant’s Opposition.
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18 II.

19 REPLY

20 A. CLEAR DISPUTES OF MATERIAL FACTS EXIST BETWEEN 21 THE PARTIES REGARDING THE AFTERSCHOOL PROTOCOL 22 THAT WILL SERVE THE MINOR CHILD’S BEST INTERESTS.

23 Contrary to Defendant’s assertion that this Court was determining a mere
24 legal question, this matter essentially turns on a substantive factual dispute
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27 of the December 5, 2019 hearing “due to exigent circumstances related to medical issues recently
28 suffered by [Defendant].”

1 concerning each parent's preferred afterschool care protocol and ultimately a
2 determination by this Court of which would serve the minor child's best interests.

3 Defendant's even openly concedes that genuine issues of material fact exist
4 between the parties concerning these matters. The presence of such genuine
5 disputes of material facts relative to such issues and their impact on the child's
6 best interests render an evidentiary hearing necessary so that the Court may
7 properly make the requisite factual findings required to validate and support any
8 orders it may issue modifying the parties' custodial agreement.

12 **B. WILL HAS ARTICULATED THE NEED FOR A TRIAL**
13 **PURSUANT TO NRCP 59.**

14 Defendant baselessly claims that "Will has not asserted any irregularity in
15 the proceedings, any misconduct, any accident or surprise...or any error in the
16 law" which would allow him to obtain relief under NRCP 59.³ Defendant seeks
17 to qualify this statement by alleging Will failed to timely lodge his objection and
18 seek relief under NRCP 59. However, as detailed more fully herein, this
19 argument fails as Will was not required to lodge an objection at the time of the
20 September 26, 2019 hearing.

24 In his moving paperwork Will not only asserts irregularities, surprise and
25 error in law, but he clearly supports each such assertion. As was discussed at
26 length in Will's initial motion, prior to the Court making a permanent change to a

28 ³ Defendant's Opposition, p. 6, ll. 20 – p. 7, ll. 2.

1 custodial schedule, it must conduct an evidentiary proceeding to afford the
2 parties adequate due process by and through the opportunity to testify, to
3 confront witnesses, and to present and rebut evidence.⁴ The instant Order clearly
4 made permanent changes to the parties' custodial schedule by increasing
5 Defendant's custodial time and this Court appeared to clearly recognize this fact
6 when it felt compelled to expressly order that the additional time allotted to
7 Defendant would not be considered in any future request to modify custody.⁵

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11 Additionally, the Order's blanket prohibition on Will's ability to utilize
12 any third-party caregivers during his custodial school days is far broader and
13 invasive than the relief sought by Defendant, who merely sought custodial
14 preference over Will's desired afterschool care protocol. The Court's *sua sponte*
15 expansion beyond the relief sought by Defendant is improper as Will was not
16 afforded the requisite notice that his rights to utilize any third-party caregiver
17 (even a relative) were in jeopardy. As such, Will's procedural due process rights
18 were compromised as he was deprived of the opportunity to prepare to defend
19 against the same.
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23 Proceedings which violate a party's procedural due process rights are
24 manifestly indicative of irregularity or surprise and such facts plainly support
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26 ⁴ *Wallace v. Wallace*, 112 Nev. 1015, 1020, 922 P.2d 541, 544 (1996) (Noting that prior to
27 modifying a custody award, a parent must be afforded a full and fair hearing with the ability to
28 disprove evidence, and further noting a Court's modification of a custody award must be
supported by factual evidence).

⁵ Order, p. 2, ll. 22-24.

1 Will's request for a trial pursuant to NRCP 59. Finally, the failure of the Order
2 to appropriately delineate and identify necessary best interest findings grounded
3 in admissible evidence constitutes an abuse of discretion. This error of law
4 provides as additional support for Will's request for an evidentiary hearing.⁶

6 **C. THERE WAS NO NEED FOR WILL TO OBJECT TO THE**
7 **COURT'S FAILURE TO SET AN EVIDENTIARY HEARING AT**
8 **THE TIME THE MATTER WAS SUBMITTED.**

9 Defendant perplexingly argues that Will should have objected to this
10 Court's failure to set an evidentiary proceeding at the hearing held on September
11 26, 2019.⁷ As undersigned counsel is not clairvoyant, it was impossible to know
12 at the time of the motion hearing that the Court's ultimate order would prove
13 violative of Will's procedural and substantive due process rights. That is to say
14 that given the Court's announced intent to take the matter under submission in an
15 effort to "stay as consistent as possible" with the prior rulings of Judge
16 Duckworth as well as to consider the various arguments presented by both
17 parties, a request for an evidentiary hearing pursuant to rule 59 at that time would
18 have been grossly premature. Ultimately, however, when the Court issued its
19 order diminishing Will's custodial time and prohibiting his ability to utilize third-
20 party care providers during his custodial afterschool time without affording Will

26 ⁶ See *Lewis v. Lewis*, 132 Nev. 453, 460, 373 P.3d 878, 882 (2016) ("[T]he district court abused
27 its discretion by failing to set forth specific findings as to all of [the best interest factors] in its
28 determination of the child's best interest during a modification of custody.").

⁷ Defendant's Opposition, p. 4, ll. 17-18.

1 his rights to an evidentiary hearing, the infringement upon Will's due process
2 rights became manifest and the instant motion followed.

3
4 At the time this matter was taken under submission by the Court following
5 the motion hearing, it was equally possible the Court could determine Defendant
6 failed to demonstrate adequate cause to proceed upon the relief requested in her
7 Motion. It was also equally possible that the Court would set the matter for an
8 evidentiary hearing regarding the issues raised in the moving papers. However,
9 the Court's failure to hold an evidentiary hearing only became apparent upon
10 entry of the Order, at which point Will filed a timely motion seeking to correct
11 both the errors contained within the Order as well as the insufficient procedure
12 which led to entry of the same, as detailed in his initial Motion.
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16 **C. DEFENDANT MISCHARACTERIZES JUDGE DUCKWORTH'S**
17 **PRIOR ORDERS.**

18 Defendant clings to the past orders of Judge Duckworth – which afforded
19 her a narrow and limited ability to care for Grayson while Will was working – to
20 buttress her instant arguments. However, Defendant misstates the process and
21 reasoning that afforded her this limited ability.
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24 Indeed, when discussing the issue of afterschool care, Judge Duckworth
25 clearly stated that allowing Defendant to care for Grayson on Wednesdays – and
26 notably *only* on Wednesdays – “did not create any additional exchanges between
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1 the parties.”⁸ Moreover, when rendering the aforementioned orders, Judge
2 Duckworth clearly stated that he was concerned with the level of conflict
3 between the parties and how additional exchanges would serve to increase such
4 conflict, as well as the lack of consistency for Grayson caused by increasing the
5 amount of custodial exchanges.
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7
8 It is clear that in rendering prior orders in this matter, Judge Duckworth did
9 not proclaim a blanket policy recognizing “that parental placement is preferred
10 over daycare.”⁹ Rather, Judge Duckworth carefully applied specific best interest
11 factors, such as the need to reduce conflict between the parties and to preserve
12 Grayson’s sibling relationship, when entering prior orders regarding the
13 afterschool care protocol.
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16 **D. THE ORDER DOES NOT MAINTAIN THE CUSTODIAL STATUS**
17 **QUO.**

18 Defendant incorrectly alleges the Court’s Order maintains the custodial
19 status quo.¹⁰ Yet the language of Defendant’s own brief belies this position as
20 she concedes in her Opposition that Grayson’s “amount of time in [Defendant’s]
21 care has changed as a result of circumstances...”¹¹ Further, the plain language of
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25 ⁸ Hearing held on June 21, 2017, Video Record at 14:49:19.

26 ⁹ Defendant’s Opposition, p. 5, ll. 14-16.

27 ¹⁰ Defendant’s Opposition, p. 5, ll. 16-19.

28 ¹¹ *Id.*

1 the Order indicates the increase in Defendant's custodial time is so significant it
2 could result in a future motion to modify custody.¹²

3
4 The Order permanently decreased the amount of Will's custodial time as
5 well as limiting his ability to utilize third-party caregivers during his custodial
6 time, which impacts Will's fundamental rights in being able to care for Grayson
7 during his custodial time.¹³ Such fundamental rights cannot be impacted without
8 first according Will procedural due process, which necessitates the holding of an
9 evidentiary hearing wherein Will can present evidence in support of his position.
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12 **E. DEFENDANT CONCEDES A BEST INTEREST ANALYSIS IS**
13 **NECESSARY.**

14 As thoroughly detailed within Will's initial Motion, this Court was
15 required to set forth specific findings pertaining to the best interest factors due to
16 the Order granting a permanent decrease in the amount of Will's custodial time
17 and limiting his ability to utilize third-party caregivers during his custodial time.
18
19 In fact, Defendant also concedes in her instant Opposition that a best interest
20 analysis was required to support the Court's orders.¹⁴ However, Defendant
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23 ¹² Order, p. 2, ll. 22-24.

24 ¹³ *Gordon v. Geiger*, 133 Nev. 542, 546, 402 P.3d 671, 674 (2017). *See also Troxel v. Granville*,
25 530 U.S. 57, 66, 120 S.Ct. 2054, 2060 (2000) ("[T]he Due Process Clause of the Fourteenth
26 Amendment protects the fundamental right of parents to make decisions concerning the care,
27 custody, and control of their children.") (plurality opinion).

28 ¹⁴ Defendant's Opposition, p. 5, ll. 20 – p. 6, ll. 2.

1 incorrectly argues that the conclusory statement within the Order indicating the
2 Court conducted a best interest analysis constitutes sufficient findings to support
3 the Order.¹⁵
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5 The conclusory statement within the Order indicating a best interest
6 analysis had been conducted does not constitute a full and complete best interest
7 analysis as required by NRS 125C.0035(4), which plainly states, “In determining
8 the best interest of the child, **the court shall consider and set forth its specific**
9 **findings...**” (Emphasis added). Here, as is evident by the plain contents of the
10 Order, there are no specific findings relative to the best interest analysis which
11 was purportedly performed.
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15 Nevada caselaw is clear that specific best interest findings are necessary
16 when making a custodial determination impacting a parent’s rights to custody
17 and care over the parent’s child.¹⁶ Accordingly, the foregoing supports Will’s
18 request for an evidentiary hearing wherein evidence can be taken by this Court,
19 after which point the Order can be amended pursuant to NRCP 52 to include the
20 required specific best interest findings based on the evidence received at trial.
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24 ¹⁵ *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015) (“Although this court
25 reviews a district court's discretionary determinations deferentially, deference is not owed to
26 legal error, or to findings so conclusory they may mask legal error...”)(Internal citations and
27 quotes omitted).
28

¹⁶ *Lewis v. Lewis*, 132 Nev. 453, 460, 373 P.3d 878, 882 (2016).

1 **F. PARENTAL PREFERENCE IS INAPPLICABLE IN MAKING A**
2 **CUSTODY DETERMINATION BETWEEN TWO PARENTS.**

3 Defendant cites to NRS 125C.004¹⁷ in an effort to shoehorn a provision
4 intended to apply to a custody determination involving a parent and a non-parent
5 to manufacture a non-existent policy which provides it is preferable in every
6 circumstance for a child to be with a parent over a non-parent. The plain
7 language of NRS 125C.004 makes it clear that this provision is only applicable if
8 the Court is contemplating an award of custody to a person other than the child's
9 parent. However, as this matter involves a custody dispute between two parents,
10 NRS 125C.004 is entirely inapplicable.
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14 In addition to Defendant's purported policy being unsupported by the plain
15 language of NRS 125C.004, adoption of such a policy would wreak havoc on the
16 bonds tying together families in Nevada. Specifically, adoption of Defendant's
17 position would mean that parents are unable to leave a child in the care of a
18 grandparent, aunt, or uncle during that parent's custodial time, which harms the
19 ability of a child to develop healthy bonds with extended relatives. Further, the
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23 ¹⁷ Will notes Defendant has previously relied upon NRS 125C.0035(3) to support the unfounded position that this
24 statutory provision somehow creates a right-of-first-refusal when a custody determination between two parents has
25 already been rendered. The plain language of NRS 125C.0035(3) does not indicate this preference is applicable in
26 relation to a parent using a third-party caregiver during that parent's custodial time as the third-party caregiver in
27 that scenario would not be a party seeking an award of physical custody. See Defendant's Motion filed August 28,
28 2019, p. 5, ll. 20 – p. 6, ll. 1.

1 Nevada Supreme Court recognizes the propriety of parents allowing their
2 children to be in the care of relatives or third-party caregivers during their
3 custodial time.¹⁸
4

5 Additionally, adoption of such a policy would run afoul of the need to
6 make specific best interest determinations particularized to the minor child at
7 issue. For example, a necessary best interest factor for this Court's consideration
8 is the "physical, mental, and emotional needs of the child."¹⁹ However, a blanket
9 policy requiring children to be in the care of a parent regardless of the
10 circumstances, even if being in the care of a relative for a period of a parent's
11 custodial time positively promotes the minor child's development, fails to
12 consider the particularized impact to a minor child's physical, mental, and
13 emotional needs.
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18 Finally, Defendant fails to rebut Will's arguments pertaining to the clear
19 legislative policy articulated in NRS 125C.001(2), which encourages both parents
20 to "share in the rights and responsibilities of child rearing." Surely, the ability to
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24 ¹⁸ *Rivero v. Rivero*, 125 Nev. 410, 427, 216 P.3d 213, 225 (2009) ("The district court should not
25 focus on, for example, *the exact number of hours the child was in the care of the parent*,
26 whether the child was sleeping, or *whether the child was in the care of a third-party caregiver*
27 *or spent time with a friend or relative* during the period of time in question.") (Emphasis added).
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¹⁹ NRS 125C.0035(4)(g).

1 utilize appropriate third-party caregivers, including relatives, constitutes one of
2 the rights and responsibilities of child rearing.

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4 **G. DEFENDANT OFFERS NO RESPONSE TO WILL'S REQUESTED**
5 **RELIEF PURSUANT TO NRCP 52.**

6 Defendant does not oppose Will's request to amend the Order pursuant to
7 NRCP 52 as requested in his initial Motion. The lack of opposition by Defendant
8 should be construed by this Court that Will's position in this regard is meritorious
9 and that he should be granted his request to amend the Order.²⁰

11 **H. DEFENDANT OFFERS NO RESPONSE TO WILL'S ARGUMENT**
12 **REGARDING THE LACK OF MUTUAL APPLICATION OF THE**
13 **ORDER.**

14 Will's initial Motion noted the Order appears on its face to violate the
15 mandate outlined in NRS 125C.0035(2) since it provides Defendant additional
16 custodial time while failing to grant Will additional custodial time under the
17 same circumstances. Due to the sparsity of the findings within the Order, it
18 appears the only basis for the lack of mutual application of the Order is due to the
19 fact Will is the father rather than the mother of the minor child.

22 Defendant fails to offer any rebuttal to Will's position regarding the lack of
23 mutual application of the Order within her instant Opposition, which should be
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²⁰ EDCR 5.502(d).

1 construed as Defendant's acknowledgment that Will's argument is meritorious in
2 this regard.²¹

3
4 **I. DEFENDANT HAS NOT SUPPORTED HER REQUEST FOR FEES
5 WITH A FINANCIAL DISCLOSURE FORM.**

6 Defendant's request for attorney's fees is not supported by a current
7 Financial Disclosure Form (FDF). EDCR 5.506(a) clearly mandates that any
8 counter-motion "involving money to be paid by a party" must be supported by a
9 FDF. Accordingly, Defendant's request for fees must be denied due to her
10 failure to submit a current FDF in support of her instant Opposition.
11

12
13 **III.**

14 **CONCLUSION**

15 For all the above and foregoing reasons, Plaintiff, William DiMonaco,
16 prays for the following relief:
17

- 18 1. For a complete denial of Defendant's Opposition and Counter-motion
19 filed herein;
20
21 2. For an order granting Will's underlying Motion in its entirety; and
22

23 . . .

24 . . .

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28 ²¹ EDCR 5.502(d).

1 3. For any further relief that the court deems just and proper.

2 Dated this 13 day of December, 2019.

3
4 **FORD & FRIEDMAN**

5 */s/ Matthew H. Friedman, Esq.*

6

MATTHEW H. FRIEDMAN, ESQ.

7 Nevada Bar No.: 11571

8 2200 Paseo Verde Pkwy., Ste. 350

9 Henderson, Nevada 89052

10 *Attorneys for Plaintiff*

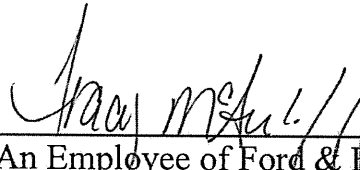
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Ford & Friedman and that on this 13 day of December, 2019, I caused the above and foregoing document entitled, **"Plaintiff's Reply to Defendant's Opposition To Plaintiff's Motion for a Trial, for Amended Judgment, and for Related Relief and Opposition to Defendant's Countermotion for Attorney's Fees And Costs"** to be served as follows:

☒ Pursuant to EDCR 8.05(a), EDCR 8.05(f) and NRCP 5(b)(2)(d) and Administrative Order 14-2 captioned, "In the Administrative Matter of Mandatory Electronic Service in the Eighth Judicial District Court," by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;

To the person listed below at the address indicated below:

Michael P. Carman	Mike@FCPfamilylaw.com
File Clerk	fileclerk@fcpfamilylaw.com
Robin Haddad	Reception@FCPfamilylaw.com
Dominique Hoskins	Paralegal@FCPfamilylaw.com
Missy Weber	Missy@FCPfamilylaw.com
<i>Attorney for Defendant</i>	


An Employee of Ford & Friedman

1 **DECLARATION OF PLAINTIFF IN SUPPORT OF PLAINTIFF'S REPLY**
2 **TO DEFENDANT'S OPPOSITION AND COUNTERMOTION**

3 I, WILLIAM DIMONACO, do hereby swear that the following is true and
4 accurate to the best of my knowledge:

- 5 1. That I am the Plaintiff in the instant matter;
- 6 2. That I make this Declaration in accordance with:
- 7 a. NRS 53.045 (allowing for unsworn declarations made and signed
- 8 under penalty of perjury in lieu of an Affidavit); and
- 9 b. In support of Plaintiff's Reply to Defendant's Opposition and
- 10 Counter-motion.
- 11 3. That I am willing and able to testify to the matters stated herein;
- 12 4. That I have personal knowledge of the matters stated herein, except as to
- 13 those matters stated upon information and belief and as to such matters, I
- 14 believe them to be true;
- 15 5. That in accordance with E.D.C.R. Rule 5.505, I have read Plaintiff's
- 16 Reply to Defendant's Opposition and Counter-motion, and the factual
- 17 averments it contains are true and correct to the best of my knowledge,
- 18 except as to those matters based on information and belief, and as to those
- 19 matters, I believe them to be true. Those factual averments contained in
- 20 the referenced filing are incorporated here as if set forth in full.
- 21
- 22
- 23
- 24 ...

1 I declare under penalty of perjury that the foregoing is true and correct.

2 DATED this 3rd day of December, 2019.

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5 WILLIAM DIMONACO,
6 *Plaintiff*
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“EXHIBIT 11”



1 ORD
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4 **DISTRICT COURT**
5 **FAMILY DIVISION**
6 **CLARK COUNTY, NEVADA**

7 William DiMonaco,
8 Plaintiff

9 v.

10 Adriana Ferrando,
11 Defendant

Case No.: D-16-539340-C

Dept.: E

Dates: September 26, 2019 &
December 18, 2019

12 **AMENDED ORDER**
13

14
15 The parties were before this Court for a hearing on September 26,
16 2019, where this Court heard Defendant's *Motion to Allow Parental*
17 *Afterschool Care* (Motion) and Plaintiff's *Counter-motion for the Child to be*
18 *Attend [sic] Champions Afterschool Learning Program during Plaintiff's*
19 *Custodial Time* (Counter-motion).
20

21
22 This Court originally took the matter under advisement to give the
23 Court an opportunity to review Judge Duckworth's prior decision on a
24 similar issue, which he heard on June 21, 2017, in an attempt to maintain
25 consistent decisions between the departments relating to this family. As
26 such, this Court reviewed the video record of Judge Duckworth's decision,
27
28

☐ Other:
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
☐ Judgment Reached by Trial
Trial Dispositions:
☐ Settled/Withdrawn
☐ Without Judicial Conf/Htg
☒ With Judicial Conf/Htg
☐ By ADR

1 which was his attempt to create a hybrid arrangement in a similar situation.
2
3 The original Order resulting from the Motion and Countermotion was
4 entered on October 7, 2019.
5

6 Plaintiff then filed a *Motion for a Trial, to Amend Judgment and for*
7 *Related Relief* on November 1, 2019. Defendant filed an *Opposition and*
8 *Countermotion* on November 20, 2019 and, after a stipulated continuance, a
9 hearing was held on December 18, 2019. It is important to note that Plaintiff
10 did not object to the Court making its original decision without taking
11 further evidence until after the October 7, 2019 Order was entered.
12 Although Plaintiff argues that the October 7, 2019 decision goes “well
13 beyond the relief sought by Defendant,” such is incorrect. No additional
14 custodial rights were granted to Defendant.
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18

19 Defendant’s August 28, 2019 Motion contains a *Declaration of*
20 *Andriana Ferrando*, which complies with EDCR 5.505 and testifies that the
21 allegations and facts presented in the Motion are true. Plaintiff’s September
22 9, 2019 Countermotion does not contain a declaration consistent with EDCR
23 5.505. As such, Plaintiff did not affirm the information in his
24 Countermotion as correct. Such raises concerns as to the accuracy of the
25 allegations contained therein. However, Plaintiff did file Exhibits to support
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1 his requests on September 9, 2019. This Court reviewed all information
2 submitted, in addition to the hearing video referenced above. Plaintiff did
3 provide a verification for his November 1, 2019 Motion and Defendant
4 provided a declaration for her November 20, 2019 Opposition and
5 Counter-motion. Such evidence provides the basis for the decision contained
6 herein.
7

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10 Plaintiff's request for amended or additional findings pursuant to
11 NRCP 52(b) is granted and this Order provides those amended and
12 additional findings.
13

14
15 Plaintiff now argues that this Court is "required to conduct an
16 evidentiary hearing" prior to entering its October 7, 2019 Order, alleging a
17 modification of custodial rights. However, no custodial rights were
18 modified.
19

20
21 Plaintiff argues that *Gordon v. Geiger*, 133 Nev. 542, 402 P.3d 671
22 (2017) controls. However, the *Gordon* case is distinguishable as that court
23 *sua sponte* ordered a permanent increase in one party's visitation and a
24 reduction of the other's custodial time. *See Id.* at 545. No permanent
25 increase in visitation, or reduction in any custodial time was ordered in the
26 October 7, 2019 Order. This Court gave direction as to after school care
27
28

1 after considering the best interests of the child, not a modification of
2 visitation or custody. The conclusion was that spending time with a fit
3 parent, rather than an after school program is in the best interests of the
4 child.
5

6
7 The Nevada Supreme Court gave direction as to when an evidentiary
8 hearing is necessary in custody cases.
9

10
11 “A district court must hold an evidentiary hearing on a request
12 to modify custodial orders if the moving party demonstrates ‘adequate
13 cause.’ *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124
14 (1993). ‘Adequate cause arises where the moving party presents a
15 prima facie case’ that the requested relief is in the child's best
16 interest. *Id.* at 543, 853 P.2d at 125 (internal quotation marks omitted).
17 To demonstrate a prima facie case, a movant must show that ‘(1) the
18 facts alleged in the affidavits are relevant to the [relief requested]; and
19 (2) the evidence is not merely cumulative or impeaching.’ *Id.*”

20 *Arcella v. Arcella*, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017).

21 In this case, neither party requested a modification of the custodial
22 orders in this case. Notwithstanding Plaintiff’s attempt to redefine the issue,
23 the conflict surrounded a few hours per week of after-school care, not
24 custody modification. Thus, this Court did not consider any modification,
25 but simply limited the decision to result from the relief requested. There is a
26 best interest component in this Court’s decision and in the “adequate cause”
27 analysis. There is also a best interest component to the relief requested,
28

1 which may be analyzed under the provisions of NRS 125C.0035(4).
2
3 However, no physical custody modification was considered.

4
5 NRS 125C.001 states:

6 “The Legislature declares that it is the policy of this State:

7
8 1. To ensure that minor children have frequent associations and
9 a continuing relationship with both parents after the parents have
10 ended their relationship, become separated or dissolved their
marriage;

11 2. To encourage such parents to share the rights and
12 responsibilities of child rearing; and

13 3. To establish that such parents have an equivalent duty to
14 provide their minor children with necessary maintenance, health care,
15 education and financial support. As used in this subsection,
16 “equivalent” must not be construed to mean that both parents are
17 responsible for providing the same amount of financial support to
their children.”

18 Notable by its absence is any reference in the State Policy to third
19
20 party caregivers providing care for the children.

21
22 This Court finds Judge Duckworth’s analysis on June 21, 2017
23 persuasive, while considering the policy that the children’s best interests are
24 better served when they spend time with their parents than in daycare or with
25 a third party (*See* NRS 125C.001). Additionally, Plaintiff’s argument for
26 consistency for the child and his ability to choose where the child is located
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1 during his timeshare was considered. However, such does not overcome the
2 policy considerations or the fact that children with being with fit parents is in
3 their best interests. Plaintiff's argument did not provide adequate cause to
4 consider further proceedings. Defendant's close physical proximity to the
5 school and the minimal disruption to Plaintiff's ability to pick up the child
6 were also considered.
7
8
9

10 The information concerning the Plaintiff's proposed afterschool care
11 is not persuasive as it appears to be an afterschool day-care which this Court
12 does not find to be preferable to an available fit parent.
13
14

15 Plaintiff's argument that he is the only one who has the ability to
16 determine the care of the child while in his custody is not supported by law.
17 These parties share joint legal and joint physical custody. As such, both
18 have rights to make decisions regarding their child. *See Rivero v. Rivero*,
19 125 Nev. 410, 216 P.3d 213 (2009).
20
21

22 Although no custody modification was requested or considered, best
23 interest of the child was considered in addition to determination whether
24 adequate cause for further proceedings existed. In analyzing the best interest
25 of the children, the statutory guidance for determining best interests is
26
27
28

1 enumerated in NRS 125C.0035(4). Those factors, as they relate to the single
2
3 issue presented herein are reviewed below:

4 *The wishes of the child if the child is of sufficient age and*
5 *capacity to form an intelligent preference as to his or her physical*
6 *custody.* The child is five years old and not of sufficient age or
7
8 capacity to form an intelligent preference. This factor is neutral.

9 *Any nomination of a guardian for the child by a parent.* No
10
11 nomination occurred in this case.

12 *Which parent is more likely to allow the child to have frequent*
13 *associations and a continuing relationship with the noncustodial*
14 *parent.* This is a key factor in the current analysis and demonstrative
15
16 in the best interest analysis. Plaintiff is arguing that the child should
17
18 be in the care of third parties of his choosing over being in
19 Defendant's care. Such is contrary to having frequent associations
20
21 and a continuing relationship with the other parent. This factor favors
22 Defendant.

23 *The level of conflict between the parents.* There continues to be
24
25 conflict between the parents. The continuing litigation over whether
26
27 the child's best interests are served by a fit parent or third parties
28 evidences that conflict. Plaintiff asserts that the conflict is created by

1 Defendant because she argues that the child's interests are better
2 served in her care over third parties. Plaintiff states that Defendant's
3 argument "would blur the lines of custodial authority, inhibit familial
4 cohesion in [his] household and severely confuse [the child]." This
5 Court finds none of those statements to be accurate. Plaintiff also
6 asserts that permitting the child to stay with Defendant until he picks
7 the child up after work requires additional exchanges, and therefore
8 interactions between the parties. While Plaintiff is correct in that
9 assertion, it does not supersede the other considerations. This factor
10 favors Defendant.
11
12
13
14

15 *The ability of the parents to cooperate to meet the needs of the*
16 *child.* The parents' ability to cooperate is an important factor. The
17 Court hopes that parents are able to see past their animosity towards
18 each other and focus on what might be best for their child.
19 Unfortunately such is not the case here. Plaintiff demands to be in
20 total control over his "time" with the child, and apparently fails to see
21 any good in the child spending any additional time with Defendant.
22 Similarly, Defendant demands that the child spend time with her over
23 third-party caregivers. Such demonstrates an inability to cooperate to
24 meet the needs of the child and results in this factor being neutral.
25
26
27
28

1 *The mental and physical health of the parents.* No evidence
2
3 relating to the health of the parents was presented. This factor is
4 neutral.

5 *The physical, developmental and emotional needs of the child.*
6
7 Plaintiff indicates that the child's needs are better served by remaining
8 in day-care or in the care of others after school while he works.
9 However, a child spending time with a fit parent better serves their
10 needs that being in the care of a third-party. This factor favors
11 Defendant.
12

13 *The nature of the relationship of the child with each parent.*
14
15 Neither party provided any evidence of their relationship with the
16 child. Ultimately, this factor is neutral.

17 *The ability to maintain a relationship with a sibling.* No
18
19 evidence was presented on this factor, resulting in a neutral finding.

20 *Any history of parental abuse or neglect of the child or a*
21
22 *sibling of the child.* No evidence was presented on this factor,
23 resulting in a neutral finding.

24 *Whether either parent has engaged in an act of domestic*
25
26 *violence against the child, a parent of the child or any other person*
27
28

1 *residing with the child.* No evidence was presented on this factor,
2
3 resulting in a neutral finding.

4 No evidence was received concerning any abduction of the
5
6 minor child which renders that factor neutral.

7 Considering the “other things” portion of the statute, the Court
8
9 is determining that Plaintiff is working and, therefore unable to care
10 for the child after school. Such is not a slight against Plaintiff or his
11 need to work, simply a reality. Defendant is available and able to care
12 for the child until Plaintiff is able to exercise his custodial time.

13
14 Considering all that, and making a best interest analysis of the NRS
15 125C.0035 factors, the issue of an unavailable parent after school in relation
16 to preference between a fit parent and a third-party care giver shall be
17 resolved as follows:

18
19
20 Only on Plaintiff’s custodial school days, from afterschool until
21 Plaintiff is able to pick up the child after work, the child shall be cared
22 for by Defendant, over any third-party care-giver.

23
24
25 If a similar situation arises during Defendant’s custodial time,
26 as Plaintiff is also a fit parent, it is the Court’s intention that he also be
27 given preference over any third-party care-giver.

1 All other aspects of existing court orders, not in conflict with
2 this decision, shall remain in full force and effect.
3

4
5 The additional time which may be exercised by either party as a result
6 of this decision shall not be considered as a basis to modify custody.
7

8 Plaintiff argues that he is entitled to a “new trial” under NRC
9 59(a)(1). As no trial was originally granted, it is interesting that a new trial
10 would be requested. This Court presumes that Plaintiff is arguing that he
11 was “prevented from having a fair trial.” Such is not the case, as the issue of
12 a few weekly hours of afterschool care never provided adequate cause for an
13 evidentiary proceeding. Plaintiff alternatively (after reviewing the October
14 7, 2019 Order) sought an evidentiary hearing pursuant to NRC 59(a)(2),
15 which deals with “[m]isconduct of the jury or prevailing party.” Plaintiff
16 cites no basis for relief under NRC 59.
17
18
19

20
21 Plaintiff further argues that “NRS 125C.050 only exists because the
22 Nevada Legislature determined that there are situations wherein the child’s
23 best interests dictate that a third party should have custodial time with a
24 minor child, even over a parent’s objection to the same.” While an
25 interesting argument, NRS 125C.050 references the ability for certain
26 relatives and other persons to petition for the right to visitation. In this case,
27
28

1 the afterschool care proposed by Plaintiff did not file such a petition. Even
2 if it did, it likely could not meet the standard in NRS 125C.050(2), (3) and
3 certainly not (6).
4

5
6 Finally, Plaintiff argues that the order restricts his "parental autonomy
7 while placing no such restriction on Defendant in the same circumstances."
8 The restriction on Plaintiff's ability to provide afterschool care was placed
9 upon him by his employer, not this Court. This Court simply performed a
10 best interest analysis between a fit parent and a third-party care-giver. As to
11 the fairness in the restriction, that argument was well taken and the Order
12 amended as a result.
13
14

15
16 As the Court understands the positions of each party, it still cannot
17 find bad faith on either side. Such eliminates a basis for attorney's fees
18 pursuant to NRS 18.010. Each side shall bear their own fees and costs for
19 these hearings.
20

21
22 IT IS SO ORDERED on January 6, 2020

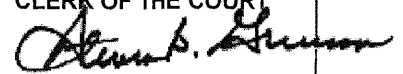
23
24
25 
26 CHARLES J. HOSKIN
27 District Court Judge
28

“EXHIBIT 12”

1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4 * * *

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1/6/2020 2:47 PM
Steven D. Grierson
CLERK OF THE COURT




5 William Eugene DiMonaco,
6 Plaintiff.
7 vs.
8 Adriana Davina Ferrando,
9 Defendant.

Case No: D-16-539340-C
Department E

10 **NOTICE OF ENTRY OF AMENDED ORDER**

11
12 Please take notice that an ORDER FROM AMENDED ORDER was
13 entered in the foregoing action and the following is a true and correct
14 copy thereof.

15
16 Dated: January 06, 2020

17
18 
19 Cassie Burns
20 Judicial Executive Assistant
21 Department E

22 **CERTIFICATE OF SERVICE**

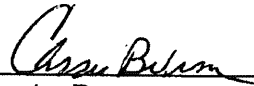
23
24 I hereby certify that on the above file stamp date:

25
26 ☒ I emailed to the following counsel, and placed a copy of the
27 foregoing NOTICE OF ENTRY OF AMENDED ORDER in the
28 appropriate attorney folder located in the Clerk of the Court's Office
of:

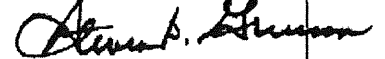
1 NEO

2 Matthew H. Friedman, Esq.
3 2200 Paseo Verde Parkway Suite 350
4 Henderson, NV 89052
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5 Michael P. Carman, Esq.
6 8965 S Pecos RD STE 9
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8
9
10 

11 Cassie Burns
12 Judicial Executive Assistant
13 Department E
14
15
16
17
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19
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1 ORD

2
3
4 DISTRICT COURT
5 FAMILY DIVISION
6 CLARK COUNTY, NEVADA

7 William DiMonaco,
8 Plaintiff

9 v.

10 Adriana Ferrando,
11 Defendant

Case No.: D-16-539340-C

Dept.: E

Dates: September 26, 2019 &
December 18, 2019

12
13 AMENDED ORDER

14
15 The parties were before this Court for a hearing on September 26,
16 2019, where this Court heard Defendant's *Motion to Allow Parental*
17 *Afterschool Care* (Motion) and Plaintiff's *Countermotion for the Child to be*
18 *Attend [sic] Champions Afterschool Learning Program during Plaintiff's*
19 *Custodial Time* (Countermotion).
20

21
22 This Court originally took the matter under advisement to give the
23 Court an opportunity to review Judge Duckworth's prior decision on a
24 similar issue, which he heard on June 21, 2017, in an attempt to maintain
25 consistent decisions between the departments relating to this family. As
26 such, this Court reviewed the video record of Judge Duckworth's decision,
27
28

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
☐ Trial Dispositions:
☐ Settled/Withdrawn
☐ Without Judicial Conf/Hrg
☒ With Judicial Conf/Hrg
☐ By ADR
☐ Judgment Reached by Trial

1 which was his attempt to create a hybrid arrangement in a similar situation.
2
3 The original Order resulting from the Motion and Countermotion was
4 entered on October 7, 2019.
5

6 Plaintiff then filed a *Motion for a Trial, to Amend Judgment and for*
7 *Related Relief* on November 1, 2019. Defendant filed an *Opposition and*
8 *Countermotion* on November 20, 2019 and, after a stipulated continuance, a
9 hearing was held on December 18, 2019. It is important to note that Plaintiff
10 did not object to the Court making its original decision without taking
11 further evidence until after the October 7, 2019 Order was entered.
12 Although Plaintiff argues that the October 7, 2019 decision goes “well
13 beyond the relief sought by Defendant,” such is incorrect. No additional
14 custodial rights were granted to Defendant.
15
16
17
18

19 Defendant’s August 28, 2019 Motion contains a *Declaration of*
20 *Andriana Ferrando*, which complies with EDCR 5.505 and testifies that the
21 allegations and facts presented in the Motion are true. Plaintiff’s September
22 9, 2019 Countermotion does not contain a declaration consistent with EDCR
23 5.505. As such, Plaintiff did not affirm the information in his
24 Countermotion as correct. Such raises concerns as to the accuracy of the
25 allegations contained therein. However, Plaintiff did file Exhibits to support
26
27
28

1 his requests on September 9, 2019. This Court reviewed all information
2 submitted, in addition to the hearing video referenced above. Plaintiff did
3 provide a verification for his November 1, 2019 Motion and Defendant
4 provided a declaration for her November 20, 2019 Opposition and
5 Countermotion. Such evidence provides the basis for the decision contained
6 herein.
7
8
9

10 Plaintiff's request for amended or additional findings pursuant to
11 NRCP 52(b) is granted and this Order provides those amended and
12 additional findings.
13
14

15 Plaintiff now argues that this Court is "required to conduct an
16 evidentiary hearing" prior to entering its October 7, 2019 Order, alleging a
17 modification of custodial rights. However, no custodial rights were
18 modified.
19

20 Plaintiff argues that *Gordon v. Geiger*, 133 Nev. 542, 402 P.3d 671
21 (2017) controls. However, the *Gordon* case is distinguishable as that court
22 *sua sponte* ordered a permanent increase in one party's visitation and a
23 reduction of the other's custodial time. *See Id.* at 545. No permanent
24 increase in visitation, or reduction in any custodial time was ordered in the
25 October 7, 2019 Order. This Court gave direction as to after school care
26
27
28

1 after considering the best interests of the child, not a modification of
2 visitation or custody. The conclusion was that spending time with a fit
3 parent, rather than an after school program is in the best interests of the
4 child.
5

6
7 The Nevada Supreme Court gave direction as to when an evidentiary
8 hearing is necessary in custody cases.
9

10
11 “A district court must hold an evidentiary hearing on a request
12 to modify custodial orders if the moving party demonstrates ‘adequate
13 cause.’ *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124
14 (1993). ‘Adequate cause arises where the moving party presents a
15 prima facie case’ that the requested relief is in the child’s best
16 interest. *Id.* at 543, 853 P.2d at 125 (internal quotation marks omitted).
17 To demonstrate a prima facie case, a movant must show that ‘(1) the
18 facts alleged in the affidavits are relevant to the [relief requested]; and
19 (2) the evidence is not merely cumulative or impeaching.’ *Id.*”

20 *Arcella v. Arcella*, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017).

21 In this case, neither party requested a modification of the custodial
22 orders in this case. Notwithstanding Plaintiff’s attempt to redefine the issue,
23 the conflict surrounded a few hours per week of after-school care, not
24 custody modification. Thus, this Court did not consider any modification,
25 but simply limited the decision to result from the relief requested. There is a
26 best interest component in this Court’s decision and in the “adequate cause”
27 analysis. There is also a best interest component to the relief requested,
28

1 which may be analyzed under the provisions of NRS 125C.0035(4).

2
3 However, no physical custody modification was considered.

4
5 NRS 125C.001 states:

6 “The Legislature declares that it is the policy of this State:

7
8 1. To ensure that minor children have frequent associations and
9 a continuing relationship with both parents after the parents have
10 ended their relationship, become separated or dissolved their
11 marriage;

12 2. To encourage such parents to share the rights and
13 responsibilities of child rearing; and

14 3. To establish that such parents have an equivalent duty to
15 provide their minor children with necessary maintenance, health care,
16 education and financial support. As used in this subsection,
17 “equivalent” must not be construed to mean that both parents are
18 responsible for providing the same amount of financial support to
19 their children.”

20 Notable by its absence is any reference in the State Policy to third
21 party caregivers providing care for the children.

22 This Court finds Judge Duckworth’s analysis on June 21, 2017
23 persuasive, while considering the policy that the children’s best interests are
24 better served when they spend time with their parents than in daycare or with
25 a third party (See NRS 125C.001). Additionally, Plaintiff’s argument for
26 consistency for the child and his ability to choose where the child is located
27
28

1 during his timeshare was considered. However, such does not overcome the
2 policy considerations or the fact that children with being with fit parents is in
3 their best interests. Plaintiff's argument did not provide adequate cause to
4 consider further proceedings. Defendant's close physical proximity to the
5 school and the minimal disruption to Plaintiff's ability to pick up the child
6 were also considered.
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10 The information concerning the Plaintiff's proposed afterschool care
11 is not persuasive as it appears to be an afterschool day-care which this Court
12 does not find to be preferable to an available fit parent.
13
14

15 Plaintiff's argument that he is the only one who has the ability to
16 determine the care of the child while in his custody is not supported by law.
17 These parties share joint legal and joint physical custody. As such, both
18 have rights to make decisions regarding their child. *See Rivero v. Rivero*,
19 125 Nev. 410, 216 P.3d 213 (2009).
20
21

22 Although no custody modification was requested or considered, best
23 interest of the child was considered in addition to determination whether
24 adequate cause for further proceedings existed. In analyzing the best interest
25 of the children, the statutory guidance for determining best interests is
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28

1 enumerated in NRS 125C.0035(4). Those factors, as they relate to the single
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3 issue presented herein are reviewed below:

4 *The wishes of the child if the child is of sufficient age and*
5 *capacity to form an intelligent preference as to his or her physical*
6 *custody.* The child is five years old and not of sufficient age or
7
8 capacity to form an intelligent preference. This factor is neutral.

9 *Any nomination of a guardian for the child by a parent.* No
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11 nomination occurred in this case.

12 *Which parent is more likely to allow the child to have frequent*
13 *associations and a continuing relationship with the noncustodial*
14 *parent.* This is a key factor in the current analysis and demonstrative
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16 in the best interest analysis. Plaintiff is arguing that the child should
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18 be in the care of third parties of his choosing over being in
19 Defendant's care. Such is contrary to having frequent associations
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21 and a continuing relationship with the other parent. This factor favors
22 Defendant.

23 *The level of conflict between the parents.* There continues to be
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25 conflict between the parents. The continuing litigation over whether
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27 the child's best interests are served by a fit parent or third parties
28 evidences that conflict. Plaintiff asserts that the conflict is created by

1 Defendant because she argues that the child's interests are better
2 served in her care over third parties. Plaintiff states that Defendant's
3 argument "would blur the lines of custodial authority, inhibit familial
4 cohesion in [his] household and severely confuse [the child]." This
5 Court finds none of those statements to be accurate. Plaintiff also
6 asserts that permitting the child to stay with Defendant until he picks
7 the child up after work requires additional exchanges, and therefore
8 interactions between the parties. While Plaintiff is correct in that
9 assertion, it does not supersede the other considerations. This factor
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15 *The ability of the parents to cooperate to meet the needs of the*
16 *child.* The parents' ability to cooperate is an important factor. The
17 Court hopes that parents are able to see past their animosity towards
18 each other and focus on what might be best for their child.
19 Unfortunately such is not the case here. Plaintiff demands to be in
20 total control over his "time" with the child, and apparently fails to see
21 any good in the child spending any additional time with Defendant.
22 Similarly, Defendant demands that the child spend time with her over
23 third-party caregivers. Such demonstrates an inability to cooperate to
24 meet the needs of the child and results in this factor being neutral.
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26
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28

1 *The mental and physical health of the parents.* No evidence
2 relating to the health of the parents was presented. This factor is
3 neutral.
4

5 *The physical, developmental and emotional needs of the child.*
6 Plaintiff indicates that the child's needs are better served by remaining
7 in day-care or in the care of others after school while he works.
8 However, a child spending time with a fit parent better serves their
9 needs that being in the care of a third-party. This factor favors
10 Defendant.
11

12 *The nature of the relationship of the child with each parent.*
13 Neither party provided any evidence of their relationship with the
14 child. Ultimately, this factor is neutral.
15

16 *The ability to maintain a relationship with a sibling.* No
17 evidence was presented on this factor, resulting in a neutral finding.
18

19 *Any history of parental abuse or neglect of the child or a*
20 *sibling of the child.* No evidence was presented on this factor,
21 resulting in a neutral finding.
22

23 *Whether either parent has engaged in an act of domestic*
24 *violence against the child, a parent of the child or any other person*
25
26
27
28

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4 No evidence was received concerning any abduction of the
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7 Considering the “other things” portion of the statute, the Court
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10 for the child after school. Such is not a slight against Plaintiff or his
11 need to work, simply a reality. Defendant is available and able to care
12 for the child until Plaintiff is able to exercise his custodial time.

13
14 Considering all that, and making a best interest analysis of the NRS
15 125C.0035 factors, the issue of an unavailable parent after school in relation
16 to preference between a fit parent and a third-party care giver shall be
17 resolved as follows:
18

19
20 Only on Plaintiff’s custodial school days, from afterschool until
21 Plaintiff is able to pick up the child after work, the child shall be cared
22 for by Defendant, over any third-party care-giver.
23

24
25 If a similar situation arises during Defendant’s custodial time,
26 as Plaintiff is also a fit parent, it is the Court’s intention that he also be
27 given preference over any third-party care-giver.
28

1 All other aspects of existing court orders, not in conflict with
2 this decision, shall remain in full force and effect.
3

4
5 The additional time which may be exercised by either party as a result
6 of this decision shall not be considered as a basis to modify custody.
7

8 Plaintiff argues that he is entitled to a “new trial” under NRCP
9 59(a)(1). As no trial was originally granted, it is interesting that a new trial
10 would be requested. This Court presumes that Plaintiff is arguing that he
11 was “prevented from having a fair trial.” Such is not the case, as the issue of
12 a few weekly hours of afterschool care never provided adequate cause for an
13 evidentiary proceeding. Plaintiff alternatively (after reviewing the October
14 7, 2019 Order) sought an evidentiary hearing pursuant to NRCP 59(a)(2),
15 which deals with “[m]isconduct of the jury or prevailing party.” Plaintiff
16 cites no basis for relief under NRCP 59.
17
18
19

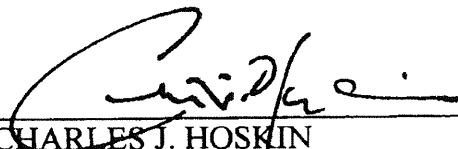
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21 Plaintiff further argues that “NRS 125C.050 only exists because the
22 Nevada Legislature determined that there are situations wherein the child’s
23 best interests dictate that a third party should have custodial time with a
24 minor child, even over a parent’s objection to the same.” While an
25 interesting argument, NRS 125C.050 references the ability for certain
26 relatives and other persons to petition for the right to visitation. In this case,
27
28

1 the afterschool care proposed by Plaintiff did not file such a petition. Even
2
3 if it did, it likely could not meet the standard in NRS 125C.050(2), (3) and
4 certainly not (6).
5

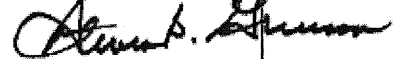
6 Finally, Plaintiff argues that the order restricts his "parental autonomy
7 while placing no such restriction on Defendant in the same circumstances."
8
9 The restriction on Plaintiff's ability to provide afterschool care was placed
10 upon him by his employer, not this Court. This Court simply performed a
11 best interest analysis between a fit parent and a third-party care-giver. As to
12 the fairness in the restriction, that argument was well taken and the Order
13 amended as a result.
14
15

16 As the Court understands the positions of each party, it still cannot
17 find bad faith on either side. Such eliminates a basis for attorney's fees
18 pursuant to NRS 18.010. Each side shall bear their own fees and costs for
19 these hearings.
20
21

22 IT IS SO ORDERED on January 6, 2020

23
24
25 
26 CHARLES J. HOSKIN
27 District Court Judge
28

“EXHIBIT 13”



1 NOAS
2 MATTHEW H. FRIEDMAN, ESQ.
3 Nevada Bar No.: 11571
4 CHRISTOPHER P. FORD, ESQ.
5 Nevada Bar No.: 11570
6 TONY T. SMITH, ESQ.
7 Nevada Bar No.: 12096
8 FORD & FRIEDMAN
9 2200 Paseo Verde Parkway, Suite 350
10 Henderson, Nevada 89052
11 T: 702-476-2400 / F: 702-476-2333
12 mfriedman@fordfriedmanlaw.com
13 cford@fordfriedmanlaw.com
14 asmith@fordfriedmanlaw.com
15 *Attorneys for Plaintiff*

10 **EIGHTH JUDICIAL DISTRICT COURT, FAMILY DIVISION**
11 **CLARK COUNTY, NEVADA**

12 WILLIAM DIMONACO,

Case No.: D-16-539340-C

13 Plaintiff,

Department: E

14 vs.

15 ADRIANA FERRANDO,

NOTICE OF APPEAL

16 Defendant.
17

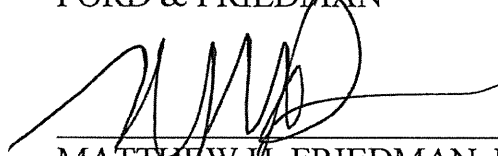
18 Notice is hereby given that Plaintiff William DiMonaco hereby appeals to
19 the Supreme Court of Nevada from an order entered in a proceeding that did not
20 arise in a juvenile court that finally establishes or alters the custody of minor
21 children entitled "Amended Order,"
22

23 ...

1 entered in this action on the 6th day of January, 2020

2 DATED this 4 day of February, 2020.

3 FORD & FRIEDMAN

4 

5 MATTHEW H. FRIEDMAN, ESQ.

6 Nevada Bar No.: 11571

7 CHRISTOPHER P. FORD, ESQ.

8 Nevada Bar No.: 11570

9 TONY T. SMITH, ESQ.

10 Nevada Bar No.: 12096

11 FORD & FRIEDMAN

12 2200 Paseo Verde Parkway, Suite 350

13 Henderson, Nevada 89052

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15 mfriedman@fordfriedmanlaw.com

16 cford@fordfriedmanlaw.com

17 asmith@fordfriedmanlaw.com

18 *Attorneys for Plaintiff*

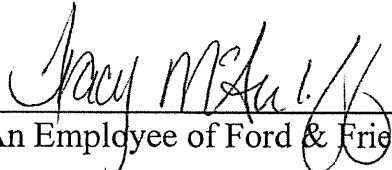
1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Ford &
3 Friedman and that on this 4 day of February, 2020, I caused the above and
4 foregoing document entitled, "**Notice of Appeal**" to be served as follows:

5 [X] Pursuant to EDCR 8.05(a), EDCR 8.05(f) and NRCP 5(b)(2)(d) and
6 Administrative Order 14-2 captioned, "In the Administrative Matter
7 of Mandatory Electronic Service in the Eighth Judicial District
8 Court," by mandatory electronic service through the Eighth Judicial
District Court's electronic filing system;

9 To the person listed below at the address indicated below:

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