

MELVIN R. GRIMES, ESQ.
Nevada Bar No.: 12972
Melg@grimes-law.com
THE GRIMES LAW OFFICE
8540 South Eastern Avenue Ste. 100
Las Vegas, NV 89122
p: (702) 347-4357
f: (702) 224-2160
Attorney for Greg Pelkola

Electronically Filed
Aug 17 2020 09:35 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREG ELLIOT PELKOLA,

Appellant,

v.

HEIDI MARIE PELKOLA,

Respondent.

Supreme Court No.: 80763

CHILD CUSTODY FAST TRACK STATEMENT

1. Name of Party filing this fast statement:

Greg Pelkola

**2. Name, law firm, address, and telephone number of attorney submitting
this fast track statement:**

Melvin R. Grimes, Esq.
Nevada Bar Number 12972
The Grimes Law Office
8540 S. Eastern Avenue Suite 100
Las Vegas, NV 89123
(702) 347-4357

**3. Judicial district, county, and district court docket number of lower court
proceedings:**

Eighth Judicial District Court
In and for the County of Clark
District Court No.: D488682

4. Name of judge issuing judgment or order appealed from:

Honorable David Gibson

5. Length of trial or evidentiary hearing.

No Evidentiary Hearing

6. Written order or judgment appealed from:

Order After Evidentiary Hearing on November 20, 2019

7. Date that written notice of the appealed written judgment or order's entry was served:

February 3, 2020

8. If the time for filing the notice of appeal was tolled by the timely filing of a motion listed in NRAP 4(a)(4),

(a) specify the type of motion, and the date and method of service of the motion, and date of filing:

N/A

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

N/A

9. Date notice of appeal was filed:

March 4, 2020

10. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other:

NRAP 4(a)

11. Specify the statute, rule or other authority, which grants this court jurisdiction to review the judgment or order appealed from:

NRAP 3A(b)(1)

12. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which involve the same or some of the same parties to this appeal:

N/A

13. Proceedings raising same issues. If you are aware of any other appeal or original proceeding presently pending before this court, which raise the same legal issue(s) you intend to raise in this appeal, list the case name(s) and docket number(s) of those proceedings:

N/A

14. Procedural history. Briefly describe the procedural history of the case:

Heidi previously sought to relocate the children. Heidi absconded with the children in December 2014. Heidi removed the children from school and took them to Arizona with an intention not to return. **20140102 Mot. for Return of Children.**

Heidi chose to return with the children prior to the hearing of February 25, 2014. Heidi also moved back into the marital home and resumed sleeping with Greg.

Heidi next sought relocation with the children June 18, 2014. The Court will note the Divorce was final May 6, 2014, Heidi remained in the marital home with Greg and the children through permission to relocate being granted. Heidi claimed improved employment and better schooling for the children. Heidi further claimed she and the children suffered allergies to the “dust here in NV.¹” The matter was heard June 26, 2014 and Heidi was granted permission to relocate with the children to Alta Monte Springs Florida. Heidi left immediately with the children.

The Court will note Heidi did not relocate to Florida. Heidi relocated to Arizona, filing a change of Address admitting as much August 21, 2014. Heidi has demonstrated repeatedly she will mislead the court to remove the children from Greg. The court should also note Heidi claimed improved schools and “a gifted program similar to the one my daughter currently attends here.” Heidi now asserts the daughter has Asperger’s Syndrome and needs special education which can be better served in Ohio.

This court held an evidentiary hearing December 19, 2017 and made findings regarding the conduct of Heidi. The court determined Heidi was engaging in parental

¹ Plaintiff’s Motion to Relocate filed 06/18/2014, page 3.

alienation and had wrongfully withheld the children. Greg was awarded 71 days of compensatory time. Greg was awarded attorney's fees and costs.

The court held another evidentiary hearing March 12, 2019 and March 18, 2019. The court was asked to resolve the issue of Greg's retirement and the improper distribution Heidi had awarded herself. The court determined too much time had lapsed and determined Greg failed to show actual fraud.

The court set the remaining issue of changing the child custody for a separate evidentiary hearing. The court held that change of custody would only be considered for the oldest child and not all three children. This fact and the ongoing issues regarding the oldest child resulted in Greg withdrawing the Motion to Modify Custody, as it became clear dividing the children was not in the best interest.

The court, in conjunction with the two prior orders, granted Greg greater access and involvement with the children: specifically, regarding the health care and education of the children. Greg has travelled to Phoenix since that time. Greg has been involved in Parent Teacher Conferences and IEP meetings. Greg has attended counseling and medical appointments for the children.

Heidi then filed the present motion to relocate to Ohio October 1, 2019. Greg filed his opposition October 22, 2019. Greg asserted bad faith and intentional interference with the non-custodial parents' visitation with the children.

15. Statement of facts. Briefly set forth the facts material to the issues on appeal:

Heidi asserts she is seeking to move to Hudson, OH to be with her fiancé. Pltf. Mot. page 3:20-21. Heidi asserts her fiancé is Justin Ritter who has resided in Ohio since 2014. Id. Heidi asserts Justin works for EMJ Metals as a truck driver. Id. at 3:23. Heidi asserts Justin cannot move to Arizona as he would lose approximately \$20,000 if transferred to Arizona. Id. at 4:1-3. Heidi is not being honest with the court.

Justin Ritter does not live in Hudson, OH. John Ritter lives in Akron, OH; specifically, 320 Palm Ave., Akron OH. Mr. Ritter lived in Barberton, OH in 2014, prior to moving to Akron. Mr. Ritter lived in Glendale, AZ prior to relocating to OH in 2014. Mr. Ritter purchased his current residence with his wife Mary Pitz in September 2016. Mr. Ritter and Ms. Pitz owned and operated JJRM Trucking out of Glendale AZ. The court will note the unfortunate passing of Ms. Pitz in April 2019.

Heidi fails to inform this court she was involved in a two-year relationship with Martin Brown, Heidi fails to inform this court the relationship ended with Martin Brown in May 2019 after she illegally entered his home and took several items from his home. Heidi wishes this court to believe she is now engaged to a man

who was widowed only five months ago and a mere four months after ending a two-year relationship.

Heidi fails to inform the court Mr. Ritter's employer, EMJ Metals, is headquartered in Los Angeles CA. EMJ Metals has numerous locations around the United States, including Phoenix AZ. Heidi informs the court Mr. Ritter would lose money by relocating to Arizona, that is not true. Truck Drivers earn an average of \$59,384.00 in Ohio. Truck Drivers in Arizona earn an average of \$64,146.00. Mr. Ritter might lose some salary if he is paid at a higher than average rate, certainly not the \$20,000.00 represented by Heidi.

Heidi raises the availability of services through Hopebridge and Applied Behavioral Services for Sara. Heidi fails to inform this court current evaluations of Sara indicate her behavior is far more behavior related rather than autism related. Heidi fails to inform this court Hopebridge has a location in Glendale AZ, while there are no centers located in Akron Ohio. The court must ask why Heidi has failed to enroll Sara in these services previously. Heidi fails to inform this court Applied Behavior Service is also not in Akron; rather it is located in Cincinnati OH more than three hours away.

Heidi next asserts career opportunities in Ohio as an LPN. Heidi fails to show the court she is losing earning capacity by relocating. The court will note an LPN in Ohio makes an average wage of \$21.90 per hour. The court will further note an

LPN in Arizona makes an average wage of \$25.43 per hour. Heidi fails to inform the court Ohio has a 4.997% personal income tax rate while Arizona has a 4.54% personal income tax rate. Heidi would be taking a significant income decrease if she relocated to Ohio.

Heidi next asserts she will have a greater support system in Ohio than in Arizona. Pltf. Mot. page 6: 7-9. Heidi declines to inform the court her mother resides very near Heidi's present residence. Heidi has been dependent on her mother to provide transportation to the exchanges over than last couple years. Heidi declines to inform this court she has other family in the Phoenix area. Heidi's family was the basis for her seeking to relocation to Phoenix in the first place. Heidi now seeks to be removed from her support system and to isolate the children further from their father.

The court can come to no other conclusion but that the children do not gain an educational advantage by relocating to Ohio.

Heidi next raises the issue of housing but asserts relocation to Hudson Ohio. Greg has previously shown Mr. Ritter lives in Akron and owns a home in that city. Mr. Ritter's home is a five-bedroom home which is not currently listed for sale. Heidi fails to remind this court she currently owns her home in Phoenix. Heidi and the children will end up living at this residence based on Heidi's past manipulation of facts to this court. Heidi asserts this housing argument to overcome the very

obvious deficiencies in schools at the home she will be living. Heidi again fails to show an actual advantage to the relocation of the children.

Heidi next asserts the environment as cooler. Pltf. Mot. page 7:4. Heidi, once again, asserts a false narrative in order to persuade the court. The court is reminded the children have grown up in Las Vegas and Phoenix. Heidi previously asserted allergies to “dust” yet relocated the children to Phoenix. Heidi’s assertions are simply false.

16. Issues on appeal. State concisely the principal issue(s) in this appeal:

- A. Whether a parent previously granted permission to relocate with minor children must seek permission of the non-custodial parent or the court before relocating to a new location when such a request is made in bad faith.
- B. Whether a parent previously granted permission to relocate with minor children must seek permission of the non-custodial parent or the court before relocating to a new location when such a request is made to frustrate or defeat the visitation and parental rights of the non-custodial parent. .
- C. Whether the court improperly awarded attorney’s fees and costs following

17. Legal argument, including authorities:

A. The Court must Make Findings of Facts and Conclusions of Law as outlined in NRS 125C.007 in all instances where a parent relocates out of State if the Relocation is based on Bad-Faith.

The Court reviews child custody determinations for an abuse of discretion. *Rico v. Rodriguez*, 121 Nev. 695, 701, 120 P.3d 812, 816 (2005). The District Court must have reached its conclusions for the appropriate reasons. *Sims v. Sims*, 109 Nev. 1146, 1148, 865 P.2d 328, 330 (1993).

Relocation of children by a custodial parent is governed by Nev. Rev. Stat. § 125C.006 and Nev. Rev. Stat. § 125C.007. Nev. Rev. Stat. § 125C.006 provides:

1. If primary physical custody has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair the ability of the other parent to maintain a meaningful relationship with the child, and the custodial parent desires to take the child with him or her, the custodial parent shall, before relocating:

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

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

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

- (a) Without having reasonable grounds for such refusal; or
- (b) For the purpose of harassing the custodial parent.

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

Nev. Rev. Stat. § 125C.007 provides:

1. In every instance of a petition for permission to relocate with a child that is filed pursuant to NRS 125C.006 or 125C.0065, the relocating parent must demonstrate to the court that:

- (a) There exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent of his or her parenting time;
- (b) The best interests of the child are served by allowing the relocating parent to relocate with the child; and
- (c) The child and the relocating parent will benefit from an actual advantage as a result of the relocation.

2. If a relocating parent demonstrates to the court the provisions set forth in subsection 1, the court must then weigh the following factors and the impact of

each on the child, the relocating parent and the non-relocating parent, including, without limitation, the extent to which the compelling interests of the child, the relocating parent and the non-relocating parent are accommodated:

(a) The extent to which the relocation is likely to improve the quality of life for the child and the relocating parent;

(b) Whether the motives of the relocating parent are honorable and not designed to frustrate or defeat any visitation rights accorded to the non-relocating parent;

(c) Whether the relocating parent will comply with any substitute visitation orders issued by the court if permission to relocate is granted;

(d) Whether the motives of the non-relocating parent are honorable in resisting the petition for permission to relocate or to what extent any opposition to the petition for permission to relocate is intended to secure a financial advantage in the form of ongoing support obligations or otherwise;

(e) Whether there will be a realistic opportunity for the non-relocating parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship between the child and the non-relocating parent if permission to relocate is granted; and

(f) Any other factor necessary to assist the court in determining whether to grant permission to relocate.

3. A parent who desires to relocate with a child pursuant to NRS 125C.006 or 125C.0065 has the burden of proving that relocating with the child is in the best interest of the child.

Respondent filed her motion to relocate with the children October 1, 2019. Appellant filed his Opposition October 22, 2019. Appellant's argument centered on the premise this relocation was Not in good faith and was solely intended to frustrate the non-custodial parent. The court heard this matter November 20, 2019.

The court ruled, "pursuant to NRS 125C.006, Mom does not need permission to relocate to the State of Ohio as she already had an Order granting her permission to relocate to the State of Arizona and the statute refers to this State, meaning the State of Nevada."² The court continued, "Therefore, Mom may relocate from the State of Arizona to the State of Ohio; however, she shall ensure Dad's visitation remains as currently Ordered as the Court Dad can still exercise his current timeshare."³

NRS 125C.007 was made part of the Statute in 2017 with the passage of AB263. The primary author of AB263 did not foresee the court's interpretation as a possible inclusion in the statute. This is evident by the primary author's drafting of SB 248 in the 80th Session of the Nevada Legislature. Senator Pickard's

² Appellant's Appendix, Vol. 3,00645-00646

³ *Id.*

language in SB 248 states, “Except as otherwise provided in this subsection, a custodial parent who has relocated with a child in compliance with the provisions of this section may subsequently relocate with the child without obtaining additional written consent from the noncustodial parent or permission from the court after providing written notice to the noncustodial parent at least 30 days before relocating with the child.”⁴ The Court must also note, the legislature failed to adopt this legislation.

The plain language of the statute makes clear that if the custodial parent intends to relocate his or her residence to a place outside of this State or to a place within this State that is at such a distance that would substantially impair. The statute also states, “In every instance of a petition for permission to relocate with a child that is filed pursuant to NRS 125C.006 or 125C.0065, the relocating parent must demonstrate to the court.”

Respondent’s assertion that permission is not necessary once granted would lead to the potential outcome of: Parent A is granted permission to relocate to Arizona from Nevada. Parent A then decides to relocate to Japan, and Parent B has no recourse or objection available. This was neither the intent of the legislation nor acceptable under the public policy of this state as stated in NRS 125C.001.

⁴ <https://www.leg.state.nv.us/App/NELIS/REL/80th2019/Bill/6420/Text>

Respondent and the court assert once relocation is granted once, the court lacks the ability to restrict a parent from relocating again. The plain language of the statute mandates a petition be filed with the court and the court determine if the relocation is in the best interest of the child[ren]. The court failed to make finding of facts and conclusions of law the relocation was: a) There exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent of his or her parenting time; b) The best interests of the child are served by allowing the relocating parent to relocate with the child; and c) The child and the relocating parent will benefit from an actual advantage as a result of the relocation.

Rather the court stated the court lacked authority to deny the Respondent's Request. The court committed error constituting abuse of discretion. The Court is therefore asked to remand this matter back to the court below for an evidentiary hearing and appropriate finding of facts and conclusions of law.

B. The District Court Exceeded its own order in granting Attorney's Fees beyond those to Prepare for the November Hearing.

The Court generally review the district court's decision regarding attorney fees for an abuse of discretion. *Albios v. Horizon communities, inc.*, 122 nev. 409, 417 (NEV. 2006).

Here the court stated Respondent's Counsel could submit an Affidavit of Fees and Costs for "preparing for today's Evidentiary Hearing..."⁵ Respondent submitted an Affidavit of Fees and Costs inclusive of two prior days of trial, which respondent cannot assert to be the prevailing party as the court ruled for each party on various issues.

The court abused its discretion in not reviewing the affidavit of fees and costs and awarding all fees and costs and not those for the hearing on November 20, 2019.

18. Issues of first impression or of public interest. Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest: Yes ☒ No ☐ . If so, explain:

NRS 125C.006 and NRS 125C.007 were codified by the legislature in 2017. The issue of subsequent relocation does not appear to have been presented to this court.

Appellant asserts the legislative history and plain language of the statute mandate a Party is required to Petition the court and demonstrate the statutory

⁵ Appellant's Appendix, Vol 3, 00646. The order was limited to the preparation for the evidentiary hearing regarding change of custody. Opposing counsel and the court was notified of the intent to not proceed on the final issue. Opposing Counsel asserted a notice of the same was not filed with the court and requested fees for preparing for the day of trial.

requirements of NRS 125C.007 any time the Custodial Parent wishes to relocate with the children, even where prior consent of judicial permission has been granted.

19. Routing Statement:

This appeal is presumptively assigned to the Court of Appeals per NRAP 17(b)(5), because it involves an issue of family law. Appellant respectfully submits, however, that the Supreme Court retain this case pursuant to NRAP 17(a)(14), because the principal issue is a question of statewide public importance and there are no published decisions of the Court of Appeals or Supreme Court on .

VERIFICATION

1. I hereby certify that this fast track statement complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this fast track statement has been prepared in a proportionally spaced typeface using Microsoft Word–Office 365 Business in font type Times New Roman size 14.

2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more and contains

3810 words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains ____ words
or ____ lines of text; or

☐ Does not exceed ____ pages.

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track statement and that the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track statement, or failing to raise material issues or arguments in the fast track statement. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information, and belief.

DATED this 10th day of August, 2020.

THE GRIMES LAW OFFICE

/s/ *Melvin R. Grimes*

Melvin R. Grimes, Esq.
Nevada Bar Number 12972
8450 South Eastern Ave., Suite 100
Las Vegas, NV 89123
(702) 565-4335
Attorney for Appellant,
Greg Pelkola

CERTIFICATE OF SERVICE

I, an employee of The Grimes Law Office, hereby certify that on the 10th day of August, 2020, I served a true and correct copy of this Child Custody Fast Track Statement as follows:

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

[Name]

[Address]

[Address]

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

Radford J. Smith, Chartered
2470 St Rose Pkwy #206,
Henderson, NV 89074
kstutzman@radfordsmith.com

/s/ Melvin Grimes

Melvin R. Grimes