

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVE EGGLESTON,

Appellant,

v.

GEORGINA STUART; CLARK
COUNTY, NEVADA, LISA
CALLAHAN; AND BRIAN
CALLAHAN,

Respondents.

Electronically Filed
Oct 26 2020 03:47 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.: 80838

**APPEAL FROM ORDER DISMISSING CIVIL RIGHTS ACTION AND
ORDER DENYING MOTION FOR RECONSIDERATION**

Eighth Judicial District Court of the State of Nevada
In and for the County of Clark
THE HONORABLE DOUGLAS E. SMITH AND
THE HONORABLE CRISTINA D. SILVA
DISTRICT COURT JUDGES

APPELLANT'S APPENDIX – VOL. 1

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CERTIFICATE OF SERVICE

I, an employee of McFarling Law Group, hereby certify that on the 26th day of October, 2020, I served a true and correct copy of this Appellant's Appendix as follows:

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

Brian Callahan
300 Ashley Dr.
New York, IL 60451
Respondent in Proper Person

Lisa Callahan
300 Ashley Dr.
New York, IL 60451
Respondent in Proper Person

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

OLSON CANNON GORMLEY &
STOBERSKI
Felicia Galati, Esq.
Attorneys for Respondents,
Georgina Stuart and Clark County

/s/ Maria Rios Landin
Maria Rios Landin



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVE EGGLESTON,
Plaintiff,

vs.

GEORGINA STUART,
Defendant.

CASE#: A-16-748919-C

DEPT. VIII

BEFORE THE HONORABLE DOUGLAS E. SMITH, DISTRICT COURT JUDGE
TUESDAY, JULY 11, 2017

**RECORDER'S TRANSCRIPT OF HEARING:
DEFENDANTS CLARK COUNTY AND STUART'S MOTION TO
DISMISS**

APPEARANCES:

For the Plaintiff:

STEVE EGGLESTON
Pro Se
Via CourtCall

For Defendant Clark County Department of Family Service:

OFELIA MONJE, ESQ.
Deputy District Attorney

Also Present:

Ken Battistella, SR
Bernadette Wojdyla

RECORDED BY: GINA VILLANI, COURT RECORDER

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Las Vegas, Nevada, Tuesday, July 11, 2017

[Hearing called at 8:28 a.m.]

MS. MONJE: Good morning, Your Honor.

THE COURT: All right. We're waiting now for Eggleston to call.

MS. MONJE: And, Your Honor, did you have a chance to read the pleadings on this?

THE COURT: I did.

MS. MONJE: Okay. I'll be short then, Your Honor.

THE COURT: I did tell him if he didn't call right at 8:30 I wasn't taking the call because I'm in trial. But we'll wait a minute. He wanted me to call him. It doesn't work that way.

MS. MONJE: I knew you well enough, Your Honor, to know that that would not be the case.

THE COURT: Nope.

[Pause in proceeding]

THE COURT: Hello, this is Judge Smith.

MR. EGGLESTON: Good morning, Judge.

THE COURT: Give me your mic, Tom.

Hold on. I need to get a mic.

All right. For the record your name again.

MR. EGGLESTON: Steve Eggleston, E, double, G, l-e-s-t-o-n.

THE COURT: All right. This --

MR. EGGLESTON: The plaintiff in pro per.

THE COURT: You're in England and I agreed to take the

1 phone call, which I normally don't do but I'm here.

2 MR. EGGLESTON: Thank you, Judge.

3 THE COURT: And then --

4 MR. EGGLESTON: Thank you, Judge. Thank you. I
5 appreciate it.

6 THE COURT: And state the record for who's here.

7 MS. MONJE: Good morning, Your Honor, my name is Ofelia
8 Monje and I'm here on behalf of defendants Georgina Stuart and Clark
9 County.

10 THE COURT: All right.

11 MS. MONJE: For the record, Your Honor, they're not parties,
12 but the parents of defendant Lisa Callahan are here, they flew in from
13 Missouri and wanted me to advise the Court.

14 THE COURT: Okay. So the Callahans are here, Clark County
15 is here, and Stuart is -- is Georgina Stuart a CPS worker?

16 MS. MONJE: She is, Your Honor.

17 THE COURT: Okay.

18 MS. MONJE: And, Your Honor, for the Callahans, it's actually
19 Lisa Callahan's parents, not Lisa Callahan --

20 THE COURT: Oh, I'm sorry. Okay.

21 MS. MONJE: -- the named defendant herself.
22 I apologize, Your Honor.

23 THE COURT: All right. It's your motion to dismiss.

24 MS. MONJE: It is my motion, Your Honor. It's a simple, short
25 motion. So unless the Court has specific questions, I'll reserve for

1 rebuttal.

2 THE COURT: Did you get a copy of the motion to dismiss,
3 Mr. Eggleston?

4 MR. EGGLESTON: Yes, Your Honor, and I oppose that.

5 THE COURT: That was a short argument, sir.

6 MR. EGGLESTON: Oh, yes, I did, yes, I did get the motion,
7 and I filed written pleadings and opposition to it.

8 THE COURT: Okay. Let me make sure I've got it.

9 Okay. I do have your opposition.

10 Do you have anything outside of the opposition you want to put
11 on the record?

12 MR. EGGLESTON: Your Honor, my opposition sets forth my
13 position fairly clearly. All I would do is request leave to amend, if the
14 Court were to find the allegations not sufficient.

15 THE COURT: But 42 -- but 42 -- a 1982 action really is a
16 federal action.

17 Have you filed a federal action?

18 MR. EGGLESTON: No, it is allowed as both the State and
19 federal action, Your Honor, so I chose the state route.

20 THE COURT: Okay. All right. So I am going to make a
21 decision based upon the pleadings rather than take oral argument.

22 MR. EGGLESTON: Okay.

23 THE COURT: All right. And I will have that in the next couple
24 of weeks.

25 MR. EGGLESTON: Oh, thank you, Your Honor.

1 THE COURT: Do you have anything else you want to put on
2 the record, Mr. Eggleston?

3 MR. EGGLESTON: I do not.

4 THE COURT: All right. And I should put down this is
5 Case A748919.

6 One question I have, and I have a law clerk that has briefed me
7 on this, Lisa Callahan, where is Lisa?

8 MS. MONJE: She resides, I believe, in Missouri?

9 THE COURT: In Missouri.

10 MS. MONJE: I'm sorry.

11 MS. WOJDYLA: New Lenox, Illinois.

12 MS. MONJE: In Illinois, Your Honor.

13 THE COURT: She's in Illinois.

14 Okay. And did you start an action as well, Mr. Eggleston, in
15 Illinois?

16 MR. EGGLESTON: I did not.

17 MS. MONJE: There is a pending action in Illinois that was
18 started by Ms. Callahan. It's a guardianship.

19 THE COURT: Okay. But we already have jurisdiction; right?

20 MS. MONJE: Who, Your Honor?

21 MR. EGGLESTON: Correct.

22 THE COURT: The county, is the county working this?

23 MS. MONJE: The Illinois court has jurisdiction --

24 THE COURT: Oh.

25 MS. MONJE: -- pursuant to UCCJA.

1 THE COURT: Okay. All right. I'll have a decision for you within
2 two weeks and we'll send it to you.

3 Do we have your address?

4 MR. EGGLESTON: Yes, you do, Judge.

5 And can I -- could I ask you one question? Something was
6 unclear because -- are the Callahans present in the Courtroom?

7 THE COURT: Yes, mister -- not Lisa and Brian, their -- the
8 parents.

9 MR. EGGLESTON: But the Callahans are present? Because
10 they have not answered the Complaint is the reason I was asking.

11 THE COURT: Well, Lisa and Brian aren't present.

12 MS. MONJE: No.

13 MR. EGGLESTON: Okay. I was just wondering.

14 THE COURT: The parents of Lisa and Brian.

15 MR. EGGLESTON: They are not, okay. Because they haven't
16 answered so I had to submit an application for default for them. So I
17 wasn't sure if they were there.

18 Okay. Well, thank you, Judge.

19 THE COURT: All right. Thank you.

20 Bye.

21 MR. EGGLESTON: Okay, goodbye.

22 THE COURT: All right.

23 MS. MONJE: Thank you, Your Honor.

24 Good luck in trial.

25 THE COURT: Prepare a proposed findings of fact on Word.

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MS. MONJE: Yes, Your Honor.

THE COURT: And are -- I guess I should have -- I should have asked while he was on the phone -- are Lisa and Brian appearing in Illinois?

MS. MONJE: Yes, Your Honor, they have a pending, open guardianship case in Illinois.

THE COURT: So that's being worked in Illinois?

MS. MONJE: Correct, correct.

THE COURT: Okay. All right.

Thank you.

MS. MONJE: Thank you, Your Honor.

Have a good day.

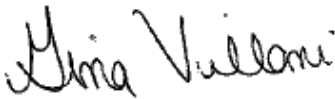
THE COURT: You too.

MS. MONJE: Thank you everybody.

[Hearing concluded at 8:34 a.m.]

* * * * *

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



Gina Villani
Court Recorder/Transcriber
District Court Dept. IX



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVE EGGLESTON,
Plaintiff,

vs.

GEORGINA STUART,
Defendant.

CASE#: A-16-748919-C
DEPT. IX

BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE
TUESDAY, SEPTEMBER 24, 2019

**RECORDER'S TRANSCRIPT OF HEARING:
PLAINTIFF'S MOTION TO DISQUALIFY DEFENSE COUNSEL FROM
CURRENT PROCEEDINGS**

APPEARANCES:

For the Plaintiff:

STEVE EGGLESTON
Pro Se
Via CourtCall

For the Defendant:

FELICIA GALATI, ESQ.
PETER M. ANGULO, ESQ.

RECORDED BY: GINA VILLANI, COURT RECORDER

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Las Vegas, Nevada, Tuesday, September 24, 2019

[Hearing began at 8:56 a.m.]

THE COURT: Calling Case A-16-748919-C, Steve Eggleston
versus Georgina Stuart.

MS. GALATI: Good morning, Your Honor, Felicia Galati
appearing for Clark County and Ms. Stuart.

THE COURT: Good morning.

MR. ANGULO: Good morning, Your Honor, Peter Angulo
representing the same defendants.

THE COURT: Good morning.

And is Mr. Eggleston on CourtCall?

Do we have anyone on CourtCall?

THE COURT RECORDER: Mr. Eggleston, are you there?

No.

THE COURT: All right. My notes indicated that he was going
to appear via CourtCall. I'll note for the record that he is not present via
CourtCall.

Counsel, I reviewed the docket for this case and it appears that
there's a pending motion for reconsideration that was never ruled on.

Am I correct in reading the docket?

MR. ANGULO: That's correct.

THE COURT: All right. So I can't make a decision on this until I
make a decision on that. And so what I would like to do is set this for
status in 30 days. I'll have a decision made on that motion to reconsider,

1 that will impact my decision in this case -- on this filing.

2 So let's set this for status 30 days.

3 MR. EGGLESTON: Your Honor, did you get my appearance? I
4 didn't hear you.

5 THE COURT: Oh, okay, good morning, Mr. Eggleston. I did
6 not get your appearance. I wasn't sure you were there.

7 How are you?

8 MR. EGGLESTON: Yes, I did say something; maybe it just
9 didn't go through, my apologies.

10 THE COURT: That's okay.

11 I was letting counsel know and I'll let you know as well that I
12 can't decide this motion until I resolve the pending motion for
13 reconsideration that the Supreme Court sent back in January.

14 And so I'm going to set a status check for 30 days and I'll make
15 my decision on the motion for reconsideration on that day or before that
16 day. And that decision will impact what to do with the current filing.

17 So this is going to be held in abeyance until the motion to
18 reconsider is resolved.

19 THE CLERK: October 29th.

20 MR. EGGLESTON: Okay, Your Honor.

21 But how will I be notified of the next hearing or status
22 conference?

23 THE COURT: So the next hearing will be October 29th at 8:30
24 in the morning.

25 MR. EGGLESTON: Did you say October two-nine?

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THE COURT: Yes, sir.

MR. EGGLESTON: Okay, thank you.

Did you say 8:00 or 9:00 in the morning? I'm sorry, Your Honor,
it's a little bit hard to hear.

THE COURT: That's okay. 8:30.

MR. EGGLESTON: 8:30, October 29.

And should I -- since I am in England, may I ask the Court's
permission now to appear by CourtCall just like this?

THE COURT: Yes, you may appear via CourtCall.

MR. EGGLESTON: Thank you, Your Honor.

THE COURT: Okay. All right. Thank you. Have a great day.
Thank you for being here.

MS. GALATI: Thank you, Your Honor.

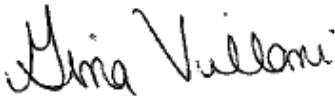
MR. ANGULO: Thank you, Your Honor. I appreciate it.

MR. EGGLESTON: All right. Thank you.

[Hearing concluded at 8:59 a.m.]

* * * * *

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



Gina Villani
Court Recorder/Transcriber
District Court Dept. IX



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVE EGGLESTON,
Plaintiff,

vs.

GEORGINA STUART,
Defendant.

CASE#: A-16-748919-C
DEPT. IX

BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE
TUESDAY, DECEMBER 10, 2019

**RECORDER'S TRANSCRIPT OF HEARING:
PLAINTIFF'S MOTION FOR RECONSIDERATION (10/22/18)
PLAINTIFF'S MOTION TO DISQUALIFY DEFENSE COUNSEL FROM
CURRENT PROCEEDINGS**

APPEARANCES:

For the Plaintiff:

STEVE EGGLESTON
Pro Se

For the Defendant:

FELICIA GALATI, ESQ.
PETER M. ANGULO, ESQ.

RECORDED BY: GINA VILLANI, COURT RECORDER

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Las Vegas, Nevada, Tuesday, December 10, 2019

[Hearing began at 9:36 a.m.]

THE COURT: All right. We are calling Case A-16-748919-C,
Steve Eggleston versus Georgina Stuart.

This is on for argument today regarding several pending
matters.

The parties can put their appearances on the record.

MR. EGGLESTON: Yes, Your Honor.

Steve Eggleston as and on behalf of the plaintiff.

THE COURT: Good morning.

MS. GALATI: Good morning, Your Honor, Felicia Galati
appearing for the county, defendants.

THE COURT: Good morning.

MR. ANGULO: Your Honor, Peter Angulo. I'm just here -- as a
witness in case the Court has questions on my involvement.

THE COURT: Okay. Thank you very much.

MR. ANGULO: Thank you.

THE COURT: I appreciate that. Thanks to all the parties for
being here this morning.

We had a hearing back, I believe, at the end of October and we
set this for argument as the parties weren't prepared to argue.

Thank you for being here in person, Mr. Eggleston, it makes the
proceedings a little bit easier than via telephone. So I certainly appreciate
that.

1 MR. EGGLESTON: Yes.

2 THE COURT: All right. And at the 10-29 hearing I did deny the
3 defendant's motion to strike the plaintiff's reply, but I did note on the
4 record that I will not consider new issues that were raised in that reply and
5 that will remain the Court's position today. So we're not -- I will not
6 consider anything that was raised in that reply.

7 So we have -- let's start with the motion for reconsideration. I've
8 reviewed the motion and the opposition. And I'm going to start with the
9 defendants, as you're defending the matter, it appears that there's a
10 couple disagreements, but I'm going to start with the first one that I
11 understand.

12 The first one being that Mr. Eggleston believes he was denied a
13 right to a Fair Hearing and it's your position that he did not exhaust the
14 Fair Hearing opportunities or administrative avenues; is that correct?

15 MS. GALATI: Correct, Your Honor.

16 THE COURT: Okay. And that is because he failed to appear at
17 least one or more than one hearing, if you could explain that to me in a
18 little bit more detail.

19 MS. GALATI: Sure. Absolutely.

20 He filed a request for a Fair Hearing, which is in appeal, there
21 were at least three hearing dates set, if not more, at his request. And he
22 asked for three continuances, three continuances were granted. And the
23 Department of Family Services or DFS, which is the agency that
24 administers the appeals, asked him to let them know when he would be
25 available for hearings since he was out of the country. And he said

1 nothing for nine months, they set a date, he again asked for a
2 continuance, they again gave him a continuance, and they asked for
3 dates, and he's given no dates to date.

4 And, in fact, he had given no dates as of the date the motion to
5 dismiss was heard by Judge Smith. And I think it's pretty clear from the
6 transcript of that hearing, and I think Your Honor mentioned it last time we
7 were here, that there's no doubt that the administrative hearing or the
8 appeal has not been exhausted and it is pending.

9 THE COURT: Okay. All right. Thank you.

10 Mr. Eggleston, briefly, how far do you respond to -- well, how do
11 you address the fact that you haven't exhausted the administrative
12 avenues?

13 MR. EGGLESTON: Thank you, Your Honor.

14 First and foremost, there's a very important distinction that's not
15 being made to the Court.

16 THE COURT: Which is what?

17 MR. EGGLESTON: They're not talking about the hearing that
18 has to do with the separation of the children. And that's the only basis on
19 which I've sued. All they're talking about is what's called a registry
20 hearing. If -- if someone makes -- if the Child Protective Services makes
21 an accusation that a parent did not properly supervise the other parent,
22 which is what they said here even though they didn't give anything that I
23 did. If they do that, they have the -- the -- if they take money from the
24 federal government, they are supposed to report that incident if it's been
25 substantiated to the registry.

1 And I brought -- I brought -- because this has been so confused.
2 It's amazing that they're even arguing this. They've never done this in the
3 history of the state before and the District Attorney's Office has never --

4 THE COURT: All right. I'm not going to accept exhibits at this
5 time.

6 MR. EGGLESTON: Oh, these were just in the pleadings I filed.

7 THE COURT: You can refer to the pleadings. You can refer to
8 the pleadings.

9 MR. EGGLESTON: Oh, okay. I was just -- I blew it up so it
10 might be easier. Okay.

11 THE COURT: Sure. You can -- no, you can refer to the
12 pleadings.

13 MR. EGGLESTON: Okay. So -- so there's -- there's one --
14 there's one particular statute which provides that if they want to list in the
15 registry that a parent failed to supervise a child, they have to provide a
16 hearing to that person in order to continue to receive funds under federal
17 law. Okay.

18 I have not sued on the basis of that. That is totally different. I
19 have sued on the basis of the specific statute and the federal and state
20 constitution that requires a hearing, a due process hearing, to be held
21 either before the children are taken or within 72 hours of them being
22 taken.

23 And that's --

24 THE COURT: And is it your position that that hearing never
25 took place?

1 MR. EGGLESTON: Oh, it didn't -- they don't dispute that.

2 THE COURT: Okay.

3 MR. EGGLESTON: The hearing never did take place.

4 THE COURT: All right. Let me just address that one specific
5 issue. Let me hear from the State.

6 MS. GALATI: Okay. Your Honor, Mr. Eggleston is playing fast
7 and loose with the facts. The children were not taken. On January 7,
8 2015, he signed a guardianship over to the maternal aunt, Lisa Callahan,
9 who he has named as a defendant in his action. That is in the Complaint,
10 it's also in the papers related to the motion for reconsideration, as well as
11 the motion to dismiss.

12 Thereafter, Ms. Callahan and/or her husband removed the
13 children from this jurisdiction. That was not a removal. So he's not
14 entitled to a hearing on that.

15 He is entitled to the Fair Hearing that we've talked about,
16 because he disputes the substantiation of the finding of abuse or neglect.
17 That's what we're talking about. We're not talking about the underlying
18 claims.

19 And just so you know, when he's talking about these 1983
20 actions, each of those actions includes a specific allegation in the first
21 Amended Complaint relying on the report finding abuse or neglect. So
22 those claims do rely on that.

23 And the distinction here is really important, it's not just that he
24 has federal claims, he has federal and state law claims. The cases he
25 relies upon, which were already dealt with on the motion to dismiss

1 hearing and rejected by the Court, were 1983 actions only. There were
2 no state law claims. He hasn't cited a single Nevada case that says, if
3 you have a 1983 action or a federal action, as well as state law claims,
4 then you don't have to exhaust your remedies.

5 THE COURT: Okay. All right. Thank you for that.

6 MR. EGGLESTON: Well, that's entirely incorrect because first
7 and --

8 THE COURT: What's entirely incorrect?

9 MR. EGGLESTON: Well, what's entirely incorrect is, first of all,
10 their motion was a motion to dismiss on one ground, one ground only.

11 THE COURT: Let's back up, Mr. Eggleston.

12 MR. EGGLESTON: Okay.

13 THE COURT: Did you sign over guardianship?

14 MR. EGGLESTON: Under coercion. The police broke into the
15 house, stood at the front -- first of all, this is not -- in the pleadings, by the
16 way, so there's no facts before the Court on this.

17 I -- what happened is, and this is what I alleged, is the police
18 broke into the house without any probable cause after Georgina Stuart,
19 who has already pled nolo contendere to being a liar in proceedings
20 involving her education, who's been sued in other cases.

21 She -- they -- they come into the house, they lock -- they put
22 somebody at the front and back. And this arises out of a -- the mother
23 having post-partum suicidal tendencies one time and somebody -- one of
24 the children just called them.

25 And they come in. They're supposed to be putting the family on

1 a program.

2 And what the police sit there, with their hands on their weapons,
3 and say, is that if you don't sign this now, we're going to take your kid and
4 you'll never see your kid again.

5 And that's what the Complaint alleged and that's what happens.
6 And no one's going to come in and say any differently. They haven't filed
7 any declaration to that. They can't possibly do so.

8 Basically they came in and then they gave them over to other
9 family members when they were supposed to be putting the family into a
10 program. All of that is alleged. They've even admitted that in part of their
11 answer.

12 But none of this is before the Court on the motion to dismiss.
13 The motion to dismiss was simply on one sole basis that they had -- we
14 hadn't -- I hadn't exhausted my administrative remedies.

15 THE COURT: Well, that --

16 MR. EGGLESTON: Well, there is no administrative remedy
17 for --

18 THE COURT: There is an administrative remedy because you
19 could potentially seek to, as an example, revoke that signing over the
20 guardianship. That hasn't been done. Or there are other administrative
21 alternatives that you could have pursued in that route.

22 MR. EGGLESTON: No, no, absolutely not, Your Honor.
23 NRS 432B.4-70 specifically states that in the case where you're going to
24 take someone's children, you either have to have emergency grounds to
25 do so, in which case then you have to have a hearing within 72 hours or

1 you have to go in advance and give somebody a hearing within 72 hours.

2 And even if the code section didn't exist, federal and state law
3 makes it absolutely clear, both substantive and procedural due process,
4 that you have to give the parents a hearing when either -- when they take
5 them into their own custody or the statute is very specific when it goes to
6 a relative. It's right there in the statute.

7 They're talking about something totally different. This -- this
8 thing that they're calling the Fair Hearing is to put my name in the registry.
9 Which, by the way, there's no facts that it ever has been done. I don't
10 think that my name is in the registry. So why would I sue on it?

11 THE COURT: Okay. We seem to lose track of what is pending
12 before the Court.

13 MR. EGGLESTON: Okay.

14 THE COURT: And I understand your position is that you signed
15 that under duress.

16 MR. EGGLESTON: Right.

17 THE COURT: That's not for my consideration at this time. But
18 if that -- what is before my consideration is the fact that it was signed and
19 therefore that takes that into -- it takes the hearing and the proceedings
20 into a different avenue and that's where it appears that you can't seem to
21 get past that roadblock, if you will, in your mind, and that is the argument
22 that they're making.

23 MR. EGGLESTON: Well, Your Honor, there's a question of fact
24 on that completely. They filed a motion to dismiss a year -- untimely, a
25 year late. They didn't make it a motion for summary judgment until they

1 submitted the order. So that was never even addressed in the pleading
2 part of it. But the law -- but the lawsuit was based upon the children being
3 taken with no hearing. Not on -- this administrative hearing, I spoke to
4 them about it.

5 THE COURT: But, Mr. Eggleston, that -- you're missing the
6 point, again, in that I understand you believe that there should have been
7 a hearing. And that would have been the case if guardianship -- I guess,
8 potentially -- that would have been the case if guardianship hadn't been
9 signed over. But ultimately guardianship was signed over. So you were
10 not entitled to a hearing, and that's with a period at the end.

11 So how does that entitle you to relief now?

12 MR. EGGLESTON: When -- when your -- when your children
13 are coercively removed, you are entitled to a hearing within 72 hours.
14 And that's a question of fact for summary judgment.

15 The other thing is this hearing that they're talking about, I
16 specifically contacted them and they told me in these -- these -- all these
17 letters are in the record -- they told me specifically that the hearing has
18 nothing to do with the removal of your kids. It only has to do with whether
19 or not they're going to put your name in the registry. But my name has
20 never gone in the registry or at least there's no facts in the case that it
21 has. And their decision, it doesn't depend upon me consenting. They just
22 set the hearing. They don't have to get my consent.

23 And, furthermore, many times it was moved without my consent
24 or my knowledge. So there's -- why haven't they set it? They said they
25 were going to set it before the last hearing a year ago regardless of my

1 consent. They don't need my consent for it. They can just set it.

2 I mean, it's going to be presided over by the -- by the former
3 attorney for the Department of Fair Housing for the state. So to call it a
4 Fair Hearing is crazy, but that's a whole different federal issue that I'm
5 addressing.

6 But that hearing -- if we took the deposition of Ms. Butts, for
7 example, and I've cited her in my motion, she would tell us specifically that
8 this registry hearing, that they're calling a Fair Hearing, has nothing to do
9 with the removal of the kids. And even if it's finally substantiated, it
10 doesn't matter because another court has specifically found me fit.

11 And if you look to the notice that I got regarding requesting this
12 hearing -- which occurs eight months after the children are taken and
13 removed to another state. It specifically states, and this is Exhibit 2 in my
14 motion, an administrative review is not available, and it's underlined, in
15 cases that have been substantiated by the Court in either a civil or
16 criminal proceeding.

17 Well, this was because a decree of custody was entered in this
18 matter on June 29, 2015, -- again, part of the record, part of my motion --
19 signed by a Nevada judge, stamped, and approved, specifically finding
20 factually that I'm a fit and proper person to be the --

21 THE COURT: Okay. Mister --

22 MR. EGGLESTON: -- guardian of the child.

23 THE COURT: -- but Mr. Eggleston --

24 MR. EGGLESTON: This --

25 THE COURT: -- that again is taking it out -- that's a -- that in

1 itself is a different matter. So even if previously a judge had found that
2 you were fit and, you know, should have, let's say, joint custody or full
3 custody or whatever the custody, that could always change. And it
4 appears -- unless I'm wrong, State -- that there was a change in
5 circumstance which prompted the removal of the children.

6 MR. EGGLESTON: Oh, no, no, Your Honor, there was no
7 change.

8 THE COURT: Hold on, Mr. Eggleston.

9 MR. EGGLESTON: All this ---

10 THE COURT: Let me hear from the State.

11 MR. EGGLESTON: Oh, I'm sorry. That was three months
12 earlier.

13 MS. GALATI: Your Honor, one has nothing to do with the other.
14 So if I can try to frame this as best I can.

15 THE COURT: Sure.

16 MS. GALATI: The first pivotal date, as I said earlier, was
17 January 7, 2015. He signs the guardianship. By the way, that's in his
18 own Complaint, he's relying upon that. It's in paragraph 29(i), it says,
19 Plaintiff and Battistella, accompanied by defendant Lisa Callahan, signed
20 a previously prepared temporary guardianship, et cetera. Okay. He signs
21 the guardianship.

22 I don't know the exact date when the Callahans or
23 Mrs. Callahan took the children out of the jurisdiction.

24 But you also know from the papers that there's an Illinois action,
25 petition for guardianship, I believe that was filed by the Callahans, which

1 Mr. Eggleston has opposed and he's put that in his papers and it's still
2 pending. So that's a whole separate situation. The children aren't here,
3 they're over there. So he's dealing with that.

4 And then he's the one who files the appeal on September 9th,
5 2015, and, as I've said, a number of hearing dates were set and a number
6 of continuances were requested by him, and we have provided the proof
7 to the Court.

8 So I'm not sure what he's talking about when he's talking about
9 removal. There is no removal. He's trying to argue the substance of the
10 claims. We're not -- this isn't a trial. We're not here for trial. We're here
11 for a reconsideration. He has the burden of establishing, are there any
12 new facts, is there any new law, did Judge Smith make an error? He
13 hasn't met any of those burdens. There are no new facts. There is no
14 new law. He's relying on everything he relied on before, everything that
15 existed at the time the motion to dismiss hearing was heard. And
16 Judge Smith was not wrong, there is a pending matter. He filed the
17 appeal. The only one who can abandon that appeal is Mr. Eggleston. He
18 hasn't done that.

19 MR. EGGLESTON: Well, Your Honor, my --

20 THE COURT: Well, there was a remittitur issued in February.

21 MS. GALATI: In what case, Your Honor?

22 THE COURT: In this case.

23 MS. GALATI: Right. Because Mr. Eggleston filed a premature
24 appeal so the Court sent it back because Judge Smith did not decide the
25 motion for reconsideration, and then of course the case was reassigned to

1 yourself and that's why we're here.

2 THE COURT: Okay. Understood.

3 So -- but the appeal ultimately -- so the appeal is now moot
4 for --

5 MS. GALATI: Yes.

6 THE COURT: Yes. Yeah, okay. All right. I just want to make
7 sure we're on the same page. Okay.

8 MS. GALATI: Yes, at this time, yes.

9 THE COURT: All right.

10 MR. EGGLESTON: And, Your Honor, if I may. There's only
11 one issue. She keeps saying I consented. I specifically alleged it was
12 coerced and the facts will prove that and the witnesses there will all say
13 that it was coerced. These are policemen with their guns out in your
14 house, that -- this is not a consent.

15 But that's even the issue they brought, they brought a single
16 issue motion to dismiss a year after the statute allowed them to do it,
17 when the district attorney didn't do it for a year and a half. And that
18 motion was based on exhaustion administrative remedies on a code
19 section that they don't even raise as an affirmative defense. The code
20 section that they raise for exhaustion of administrative remedies --

21 THE COURT: Why would they have to raise a code section as
22 an affirmative defense?

23 MR. EGGLESTON: Well, if you're going to allege failure to
24 exhaust under that code section, you have to do that. And the section
25 that they did read raise is specifically decided by *Patsy*.

1 In the civil rights area, the *Patsy* case has been black letter law
2 forever. A government, a local government cannot make you go through
3 an administrative process as a precondition to having a civil rights claim
4 decided. It defeats the whole purpose.

5 Furthermore, if this one was decided, it wouldn't affect the case.
6 Because even if it was substantiated, it doesn't mean anything, that
7 doesn't mean you can still take someone's kids without a hearing.

8 And, furthermore, the Callahans are now the government.

9 THE COURT: Well, Mr. Eggleston, you have to stop arguing
10 that because you signed the paperwork that allowed them to take
11 guardianship of your children. So your --

12 MR. EGGLESTON: But I alleged it was coerced in the
13 Complaint, Your Honor, specifically in my Complaint.

14 THE COURT: Even making an allegation that it was coerced
15 doesn't take it outside of the fact that you still have to exhaust
16 administrative remedies. Those --

17 MR. EGGLESTON: Well, the code section says, if you give it --
18 if you force to a -- another relative, they have to give you that -- well, see,
19 that's -- that -- they didn't bring a motion on that basis. That's never even
20 been briefed.

21 They brought a motion on one basis, failure to exhaust. They
22 didn't even cite *Patsy*, which is the controlling U.S. Supreme Court case
23 on that subject, and they did it a year late based upon a code section that
24 they didn't cite as an affirmative defense which they have to do. They
25 didn't produce any evidence and they didn't do anything to even show that

1 there had been a registry filed.

2 The Fair Hearing that I'm entitled to, and the children were
3 entitled to, is what I've sued on. Whether or not there's a coercion, it's a
4 state of mind issue. Specifically something that's a question of fact to be
5 decided by a jury. They've destroyed, by the way, all the evidence, which
6 is now part of this record. It existed prior to the time that they first gave
7 me this alleged accusation, which occurred a month after all this
8 happened. So they've destroyed all of that evidence and then they filed
9 this motion without any advance. So I can't cite to you all the evidence
10 which would show.

11 And -- oh, and, Your Honor, they also sent me a tape that
12 showed the police who had been called to remove the kids. I didn't have
13 a chance to even put that into evidence because this was just a motion
14 based upon a failure to exhaust administrative remedy that did not even
15 apply. The registry, administrative hearing, whether that happens or --
16 they don't even have to hold that.

17 THE COURT: Okay.

18 MR. EGGLESTON: It doesn't make any difference. If they
19 don't ever hold that, it can't block me from having a civil rights lawsuit.
20 *Patsy* makes it absolutely clear. The reason there's no Nevada cases
21 there's never been a case that said otherwise. *Patsy* is controlling law.
22 It's never been accepted. There's no Supreme Court case that's ever
23 backed up their position. There's no appellate case. And the only trial
24 court case, the one that I mentioned a minute ago, that was brought
25 against Ms. Stuart, it's a federal court case, there was no administrative

1 remedy issued argued at all in that case.

2 And they --

3 THE COURT: Okay.

4 MR. EGGLESTON: -- it's -- this is the one that --

5 THE COURT: All right, Mr. Eggleston --

6 MR. EGGLESTON: Okay.

7 THE COURT: -- I think we're starting to go down --

8 MR. EGGLESTON: All right.

9 THE COURT: -- the same path we went last time.

10 All right. So do you have anything you'd like to add?

11 MS. GALATI: Your Honor, I just want to point out something. I
12 think that what is clear, at least in the papers -- and we didn't bring it up
13 today but I just want to point it out to you -- Mr. Eggleston, as I said, he
14 filed the appeal, a number of dates were set, and then he requested
15 continuances, and he hasn't gone back to try and get a date.

16 So what we believe is going on here is that Mr. Eggleston was
17 attempting -- filed this action in an attempt to get discovery here that he
18 could use at the Fair Hearing. Because at the Fair Hearing, he doesn't
19 get the discovery that you can get in this court. So in an action filed in this
20 court, you can get requests for production, interrogatories, request for
21 admissions, you can get depositions. None of that is available in the Fair
22 Hearing process.

23 And, in fact, in one of his request for a continuance, and it's
24 Exhibit K -- yes, Exhibit K, page five of the email, Mr. Eggleston asked for
25 the continuance. He says, I'm formally requesting that this hearing be

1 continued until after the resolution of the civil rights lawsuit currently
2 pending in Clark County, District Court. So he goes on.

3 So our belief is that he has continued and continued and
4 continued the hearings so that he can get discovery here and use that
5 somehow to set aside the finding of abuse or neglect in the Fair Hearing
6 process, which he would not otherwise be able to do in that process.
7 There is no discovery process. It's a simple hearing.

8 MR. EGGLESTON: Your Honor, that is -- I've never even heard
9 that. It's utter and total speculation. That's absolutely not true. And they
10 have never argued that before.

11 Their motion was based on one issue, does that failure to hold
12 the registry hearing it prevent me from -- from -- from proceeding in a civil
13 rights case where *Patsy* specifically holds that no administrative
14 exhaustion is required. That's the U.S. Supreme Courts controlling
15 decision. It's taught in law school. It's the basic rule that governs this
16 whole process. You can't -- you can't stop a civil rights lawsuit by saying
17 someone didn't engage in a hearing, especially when it would have been
18 a year or two after the civil rights violation happened.

19 What about all the 12 months before that? That's a civil rights
20 violation in and of itself.

21 THE COURT: Okay.

22 MR. EGGLESTON: Which is what that other appellate -- that
23 other federal case holds.

24 THE COURT: All right. All right. I've considered the arguments
25 of counsel. And, Mr. Eggleston, I'm going to take this under submission.

1 I'm going to put it on my chambers calendar for two weeks, which would
2 be --

3 THE CLERK: How about three? We don't have a calendar that
4 day.

5 THE COURT: Okay, three weeks.

6 And I will issue an order with my decision.

7 MR. ANGULO: Yes, Your Honor.

8 THE COURT: So that's 12 -- December 30th; right?

9 THE CLERK: Yes.

10 MR. EGGLESTON: What was -- I'm sorry, Your Honor.

11 THE COURT: December 30th is my chambers calendar.

12 MR. EGGLESTON: Okay. Can you tell me what -- I don't
13 understand what that is.

14 THE COURT: I'll decide from my chambers --

15 MR. EGGLESTON: Oh.

16 THE COURT: -- meaning there won't be a hearing on that.
17 There will be a minute order with my decision.

18 MR. EGGLESTON: I don't have to be here though for that?

19 THE COURT: No, you don't have to be here for that.

20 And it will come out either the 30th or before.

21 MR. EGGLESTON: Okay.

22 THE COURT: I just set it as a reminder to myself to make sure
23 it goes out.

24 MR. EGGLESTON: And will Your Honor address whether or
25 not the Callahans should not have been dismissed as well? They didn't

1 bring a motion. They aren't here today. Because the order that was
2 submitted, that was signed by JJ, says it's for the Callahans too, yet no
3 motion was ever filed by the Callahans and the motion to dismiss didn't
4 mention the Callahans.

5 THE COURT: I see your hand up.

6 MS. GALATI: Your Honor, just -- just so it's clear, I'm an officer
7 of the court --

8 THE COURT: Right.

9 MS. GALATI: -- so I feel an obligation to tell you this. I am not
10 the Callahans' lawyer. But it's my information that Mr. Eggleston failed to
11 timely serve the Callahans with the first Amended Complaint. In other
12 words, it was beyond the 120 days. So I'm just letting you know that. It's
13 not up to me to make that decision. I think the first Amended Complaint
14 was filed on 8-10-1, and the affidavit of service that was filed in this court
15 on 4-4-18 says they were served on March 8th, '18, with the first
16 Amended Complaint. I think that's beyond the 120 days but --

17 MR. EGGLESTON: Your Honor, I --

18 MS. GALATI: -- I leave that to you.

19 MR. EGGLESTON: -- if I might, I hired Junes Legal to serve
20 both Complaints. They're a reputable service agency. They served both
21 of them instantly after they were served -- after they were filed. And that's
22 what I hired them to do.

23 None of that's been addressed before so I can't -- whether she's
24 an officer of the court or not I can't address it. But I can assure you that I
25 hired them and they'll give a declaration saying that they did what they've

1 done for 15 or 20 years and they served everybody that was supposed to
2 be served in the manner that it was supposed to be done.

3 MS. GALATI: The declaration --

4 MR. EGGLESTON: That's what I hired them to do.

5 MS. GALATI: Sorry. Your Honor, the declaration is on file. It's
6 dated 4-4 --

7 THE COURT: 4-4-18.

8 MS. GALATI: Correct. Thank you.

9 MR. EGGLESTON: Which has never been raised ever until
10 now, at this exact moment, without any advance notice for me to disprove
11 it. So I would just object to it being raised.

12 THE COURT: All right. All right. Thank you everyone for being
13 here today. I appreciate it.

14 MR. EGGLESTON: Thank you.

15 MS. GALATI: Thanks for your patience, Your Honor.

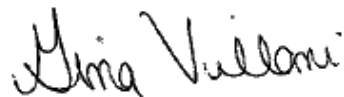
16 MR. ANGULO: Thank you, Your Honor.

17 THE COURT: Have a good day.

18 [Hearing concluded at 10:01 a.m.]

19 * * * * *

20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

23 

24 Gina Villani
25 Court Recorder/Transcriber
District Court Dept. IX