IN THE SUPREME COURT OF THE STATE OF NEVADA

LYUDMYLA ABID,

Appellant,

vs.

SEAN ABID,

Respondent.

S.C. DOCKET NO.: 80933
District Court Case No. D-10-424830-Z

CHILD CUSTODY FAST TRACK RESPONSE

1. **Name of party filing this fast track response**: Sean R. Abid.

2. **Name, law firm, address, and telephone number of attorney or proper person respondent submitting this fast track response**:

John D. Jones, Esq., Bar No. 006699
Jones & LoBello
10777 West Twain Avenue, Suite 300
Las Vegas, Nevada 89135
Telephone: 702-318-5060

3. **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

4. **Procedural history. Briefly describe the procedural history of the case only if dissatisfied with the history set forth in the fast track statement (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript)**:

This Court is already aware of the prior appellate history of this case. (See *Abid v. Abid* 133 Nev 153, 2017) The instant appeal was filed by Appellant after the district Court denied her motion to change custody without an evidentiary hearing based upon the fact that there was not adequate cause to reopen the issue of child custody.

5. Statement of facts. Briefly set forth the facts material to the issues on appeal only if dissatisfied with the statement set forth in the fast track statement (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):

Unhappy with this Court's 2017 decision affirming the District Court decision changing custody from Joint Physical to Primary Physical to Respondent, Appellant waited less than two years to try to undo what occurred at the District Court trial and this Court's affirmance thereof. In fact, a large portion of Appellant's fast track statement discusses her many complaints regarding both the District Court and this Court's decisions from 2016 and 2017, respectively. In her motion, which was properly denied by the District Court, Appellant set forth the following as the bases of her motion:

1. Respondent allegedly scheduled activities on Appellant's custodial time.
2. Respondent allegedly refused to allow Appellant to take Sasha to her work on a school day.

3. Respondent allegedly refused to allow Sasha to wear a cell phone watch in his home.

4. Respondent allegedly denied phone contact between Sasha and Appellant during his 2018 summer vacation.

5. Respondent allegedly does not allow child privacy in his home for Sasha to contact Appellant and allegedly placed a recording device under Sasha's bed.

6. Respondent allegedly instructs Sasha not to tell Appellant what occurs in his house.

7. Respondent allegedly did not allow the Sasha to go to the airport for his sister's arrival from Russia during Respondent's custodial time.

8. Respondent is allegedly trying to alienate Appellant.

9. Respondent was allegedly emotionally unavailable to support the relationship between Appellant and Sasha.

10. Sasha is allegedly not properly cared for while in Respondent's care.

11. Sasha is allegedly required to care for his brothers.

12. Respondent allegedly exposed Sasha to videos of Court proceedings by posting them on the internet.

13. Respondent allegedly read Sasha part of Appellant's husband's sentencing report for his multiple felony criminal conviction for which he was sentenced to 10 years in prison.

14. That there was newly discovered evidence regarding the 2016 District Court proceedings.

15. Respondent allegedly refuses to co-parent with Appellant.

16. Respondent allegedly needed his moral boundaries evaluated.

(ROA 3130-62)

Basically, the motion filed by Appellant was the "sling as many unsupported allegations against the wall and hope that some of it sticks" type of motion which is the blight of Family Court. In her many arguments, Appellant revealed many new reasons why Respondent should be maintained as the primary custodial parent to Sasha. What was truly disturbing was the revelation that Appellant thought it was appropriate to interrogate Sasha with leading questions and record those interrogations to present them as "evidence" to the Court.

All of Appellant's allegations, even if true, would not have risen to the level of reopening the issue of child custody. At best, if any of the allegations were true, the Court would have issued admonitions, not orders changing custody. The one fact that the Court clearly relied upon in recognizing the meritlessness of Appellant's allegations was the fact that Sasha was thriving and excelling in

school. No child that was subjected to the types of horrors fabricated in Appellant's motion would not only not show any manifestations, but they also would not excel in both academics and citizenship in school. (ROA 3397) Because of the broad discretion bestowed upon the District Courts in matters of child custody, the absence of any negative effects of the alleged parental fault is dispositive of many motions to change custody.

Moreover, the allegations are nearly identical to all of the issues that Appellant presented to the Court appointed expert in the 2016 case. Like during the 2016 trial, in his opposition, Respondent easily disproved all of Appellant's allegations. (ROA 3370-86) Moreover, as a result of the allegations made by Appellant, the Court ordered the CPS records regarding Respondent's alleged neglect of Sasha. It is very telling the Appellant has opposed Respondent's request that this Court receive, as part of the record, the CPS records ordered by the District Court. The reason she opposed them is that they prove that like all of her allegations, those related to alleged neglect are false. Not only do the records establish that the primary allegations of neglect in Respondent's motion were determined to be unsubstantiated, they also revealed the many other false allegations that Appellant has made over the years. (*See* CPS records which this Court Ordered be transmitted by the District Court to the Supreme Court in its July 6th, 2020 order)

The actual evidence, upon which the District Court could have reasonably relied, not only disproved Appellant's allegations but also gave the District Court ample evidence for it to recognize that the prior District Court judge presiding over the case (and this Court in its affirmance thereof) absolutely made the right decision. The actual evidence which was presented in Respondent's Opposition also revealed that Appellant's attempts at alienation continue. The school project attached as Exhibit "2" to Respondent's Opposition made clear that Appellant continues to manipulate Sasha. (ROA 3422) A statement by Sasha that "if I were president I would make sure judges pall all of their money if they let a dad steal a kid from a mom" was really all the District Court needed in order to deny Appellant's motion. Could any District Court really believe that the statement contained on Sasha's President's Day project did not come directly from his mother?

Moreover, Respondent's Opposition revealed Appellant's refusal to allow Sasha to participate in sports because it interfered with her custodial time. (ROA 3385) Fortunately, for Sasha's sake, the Court remedied this in its order.

6. Issues on appeal. State concisely your response to the principal issue(s) in this appeal:

1. The District Court appropriately applied the *Rooney* Standard in declining to hold an evidentiary hearing.

2. The District Court did not abuse its discretion.

3. The District Court did not commit an error of law.

As it pertains to Appellant's list of alleged issues, Respondent offers the following observations:

A. There was no change of circumstances materially affecting the welfare of Sasha. When a court considers the types of allegations made by Appellant, particularly in a case such as this in which Appellant has been proven to be a child alienator, it usually looks for some manifestation in the child of all of the alleged bad acts. The Court recognized that under Respondent's primary care and custody, that Sasha was excelling in school and thriving. Moreover, the evidence of Appellant's continued attempts to manipulate Sasha even further established that, sadly, nothing, not even losing custody of her son caused a change in circumstance for Appellant.

B. The decision that Sasha was allowed to participate in basketball did not require an evidentiary hearing. Appellant did not object to Sasha playing basketball, only that it would take a few hours per month away from her time share. Respondent pointed out that Appellant could actually gain more time with Sasha if she came to the practices on Respondent's custodial time. To eliminate that as an issue, the District Court awarded Appellant sufficient additional custodial time

to ensure that Appellant was not deprived of time as a result of her willingness to allow Sasha to play basketball on her custodial days. Because there was no reduction in Appellant's timeshare, but rather an increase, her position that a hearing was required is misguided.

C. With regard to the request for a forensic child interview, the Court properly denied this request. At the time of the hearing on Appellant's motion for reconsideration, in order to once and for all eliminate the allegation that Sasha was in some way suffering, the judge stated that he would order an interview at Family Mediation Center and that he himself would watch the interview take place. The Court stated that if there was anything of concern in the interview, that he would put the matter on calendar. The matter was never put back on calendar by the District Court. This interview was not forensic in nature because it was not conducted by a PhD. Moreover, nothing in Nevada law requires the District Court to outsource a forensic interview when he has already denied the motion to change custody which requested the interview.

7. Legal argument, including authorities:

Nothing in the more recent line of custody cases decided by this Court discussing the need for evidentiary hearings for changes in most issues related to

child custody has overruled *Rooney v. Rooney* (105 Nevada 540, 1993) or deprived the District Courts of its discretion to determine if the allegations and evidence presented in a custody motion rise to the level of requiring an evidentiary hearing. What Appellant does not seem to understand is that a District Court judge not agreeing with her assessment of things is not an abuse of discretion or error of law. In fact the recent line of cases from this Court stands for the proposition that if a change is ordered, a hearing must be held, not that a hearing is automatic when the evidence is insufficient.

In *Rooney,* this Court held as follows:

> Nevada statutes and case law provide district courts with broad discretion concerning child custody matters. *See generally* NRS 125.510; *Culbertson v. Culbertson,* 91 Nev. 230, 533 P.2d 768 (1975) (it is presumed that a trial court has properly exercised its judicial discretion in determining the best interests of a child); *Paine v. Paine,* 71 Nev. 262, 287 P.2d 716 (1955) (a district court has the discretion to act when the matter before it concerns the interests or welfare of children). Given such discretion in this area, we hereby adopt an "adequate cause" standard. That is, we hold that a district court has the discretion to deny a motion to modify custody without holding a hearing unless the moving party demonstrates "adequate cause" for holding a hearing. *See *543 Pridgeon v. Superior Court,* 134 Ariz. 177, 655 P.2d 1 (1982) (court shall deny a motion to modify custody unless it finds that the pleadings establish **125 adequate cause for hearing the motion); *Betzer v. Betzer,* 749 S.W.2d 694 (Ky.Ct.App.1988) (if the trial court determines that the affidavits fail to establish adequate cause for a hearing, the motion for modification of custody shall be denied without a hearing); *Lutzi v. Lutzi,* 485 N.W.2d 311 (Minn.Ct.App.1992) (court did not wrongfully deny an evidentiary hearing on a proposal to modify custody where the moving party failed to demonstrate a prima facie case for the modification); *Roorda v. Roorda,* 25 Wash.App. 849, 611 P.2d 794

> (1980) (court shall deny a motion to modify custody unless the affidavits establish adequate cause for hearing the motion). "Adequate cause" requires something more than allegations which, if proven, might permit inferences sufficient to establish grounds for a custody change. *Roorda v. Roorda,* 25 Wash.App. 849, 611 P.2d 794, 796 (1980). "Adequate cause" arises where the moving party presents a prima facie case for modification. To constitute a prima facie case it must be shown that: (1) the facts alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not merely cumulative or impeaching. *Roorda,* 611 P.2d at 796.[4]

Rooney v. Rooney, 109 Nev. 540, 542–43, 853 P.2d 123, 124–25 (1993)

In this case, not only did Appellant not provide adequate reliable evidence to support the extraordinary relief she sought before the District Court, the evidence provided by Respondent in the form of report cards, school projects, and CPS records, clearly established that not only had there been no change in circumstances, but also that Appellant being awarded more custody would be inimical to the best interests of the child. Moreover, Appellant's mere allegations were belied by the multiple false reports and claims that she made with CPS and the record and findings from the 2016 proceedings which established her as, not only an alienator, but as the parent whose credibility in the allegations she makes is suspect. The District Court, in its broad discretion, objectively viewed the allegations made by Appellant, compared it to the history of this case and the

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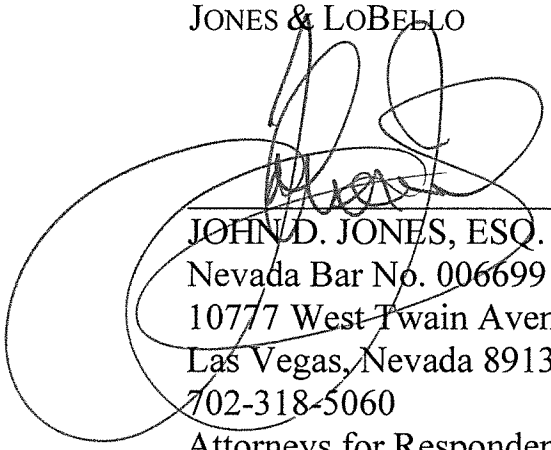
actual evidence provided by Respondent and properly concluded that there was insufficient basis to reopen child custody.

RESPECTFULLY SUBMITTED this 3rd day of August, 2020.

JONES & LOBELLO



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VERIFICATION

1. I hereby certify that this fast track response 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 response has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point, Time New Roman font; or

[ ] This fast track response has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

2. I further certify that this fast track response complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it is either:

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains ___ words or ___ lines of text; or

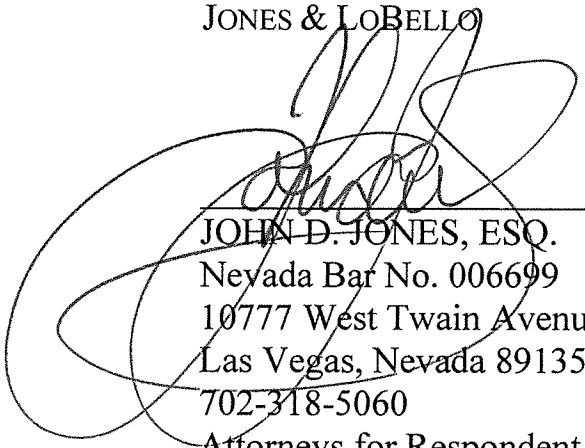
[X] Does not exceed 11 pages.

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track response and that the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track response. I therefore certify that the

information provided in this fast track response is true and complete to the best of my knowledge, information, and belief.

RESPECTFULLY SUBMITTED this 3rd day of August, 2020.

JONES & LOBELLO



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PROOF OF SERVICE

I, Cheryl Berdahl, declare:

I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed at Jones & LoBello, 10777 West Twain Avenue, Las Vegas, Nevada 89135. I am readily familiar with Jones & LoBello's practice for collection and processing of documents for delivery by way of the service indicated below.

On August 3, 2020, I served the following document:

RESPONDENT'S CHILD CUSTODY FAST TRACK RESPONSE

On the interested party(ies) in this action as follows:

Lyudmyla A. Abid, nka
Lyudmyla A. Pynkovska
2167 Montana Pine Drive
Henderson, Nevada 89052
702-208-0633
Appellant in Proper Person

By Mail. By placing said document in an envelope or package for collection and mailing, addressed to the person(s) at the address(es) listed above, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing of mail. Under that practice, on the same date that mail is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on August 3, 2020, at Las Vegas, Nevada.

Cheryl Berdahl