IN THE SUPREME COURT OF THE STATE OF NEVADA

LILLIAN LACY HARGROVE, Appellant, vs. THOMAS REID WARD Respondent.	)	CASE NO.: 81331

PETITION FOR REHEARING

COMES NOW the Respondent, Thomas Reid Ward, by and through his Counsel, Amanda M. Roberts, Esq., and files this Petition for Rehearing. This Petition is made and based upon the pleadings and papers on file herein, the attached Points and Authorities and the attached Affidavit of Amanda M. Roberts, Esq.

DATED this 25th day of April, 2022.

ROBERTS STOFFEL FAMILY LAW GROUP

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POINTS AND AUTHORITIES

On March 24, 2022, this Court files its Opinion. Therein, this Court opined that in a paternity action the three (3) year statute of limitation permits retroactive child support after a child reaches the age of majority. As such, this matter was remanded to the District Court for further proceedings regarding this issue. In the Opinion, the Court stated, "Paternity is not disputed by the parties, and Ward is named as the father on G.W.'s birth certificate."[1] This Court then goes on outline three (3) cases deemed relevant to this issue.

In the Opinion, the Supreme Court overlooked and did not address Respondent's argument on Appeal that paternity was not the appropriate action. Specifically, *NRS* § 126.161 (1) states, "[a] judgment or order of a court, or a judgment or order entered pursuant to an expedited process, determining the existence or nonexistence of the relationship of parent and child is determinative for all purposes."[2] As set forth herein, there was no need to establish a relationship because one already deemed to exist under *NRS* § 126.053 (1) because Thomas signed a voluntary acknowledgement and was included on the child's birth

[1] Opinion at page 2.
[2] Respondent's Answering Brief at page 12.

certificate.[3] Therefore, Judge Henderson never addressed paternity because it had already been established prior to Lillian's filing. ROA Vol. I at 000003.[4]

Furthermore, the statutory scheme provides that if such an Order is issued to determine "the existence or nonexistence of the relationship of parent and child" then it must include an Order for support for a "minor child."[5] *NRS* § 126.161 (1) and (3). *NRS* § 126.161 (3) clearly states, "[i]f the child is a minor, such a judgment or order of this State must provide for the child's support as required by chapter 125B of NRS[.]"[6] As such, the legislative intent was clear and the language of the statute was not ambiguous. *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000). Here, this Court went outside the prescribed statutory language and interpreted meaning which was not necessary because the statute clearly says minor child. If the legislature meant to include support after reaching the age of majority then the statutory language would be much different. That is the not case in this matter.

In this matter, the Court relied upon *Padilla v. Montano*, 862 P.2d 1258, 1263 (N.M. Ct. App. 1993). The facts of *Padilla* are drastically different and distinguishable from the facts of this case. In *Padilla*, the action was for paternity

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[3] *Id.*
[4] *Id.*
[5] Respondent's Answering Brief at page 13.
[6] *Id.*

because the Father was not listed on the birth certificate. *Id.* The Mother in *Padilla* sought an Order to confirm the parent-child relationship. *Id.* In New Mexico, the Uniform Parentage Act was adopted and the New Mexico Supreme Court stated, ""[P]arent and child relationship" is defined under the Uniform Act as being "the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties and obligation." See § 40-11-2. A paternity proceeding is a civil action to compel a putative father to support his child." *Id.* Therefore, under New Mexico law it was an allegation of fatherhood, not a confirmed relationships. Again, this case is distinguishable because Respondent was listed on the child's birth certificate and a parent-child relationship exists before the filing of any District Court action by Appellant.[7]

This Court also referenced in the Opinion *Campagna v. Cope*, 971 So. 2nd 243 (Fla. Dist. Ct. App. 2008). In Florida, there was conflicting conflict in the case law. *Id.* Therefore, to correct the conflicting case law the legislature engaged law in the State of Florida (61.30(17)) which provides that "the court has discretion to award child support retroactive to the date when the parent did not reside together in the same household with the child, not to exceed a period of 24 months proceeding the filing of the petition, regardless of whether that date precedes the filing of the

[7] Opinion at page 2.

petition." *Id.* As such, by correcting the error in the case law the Florida legislature opened the door for an action to be brought after the child reaches the age of majority. Again, this case is distinguishable because the statutory scheme of Chapter 125B and 126 both identify "minor child" which is vastly different from the statutory laws in the State of Florida.

Finally, this Court referenced *Carnes v. Kemp*, 821 N.E.2d 180, 182 (Ohio 2004). Again, this case is distinguishable from *Carnes* because the adult child brought the action and has standing not the parent. Furthermore, under Ohio law, there was language within Ohio R.C. 3111.05 which stated, "[a]n action to determine the existence or nonexistence of a father and child relationship may not be brought later than five years after the child reached the age of eighteen." In this matter, paternity was already established and a parent-child relationship existed.[8] This is a much different set of facts then those set forth in this matter.

Additionally, this Court failed to address the Respondent's arguments regarding *NRS* § 125B.0050 (1) regarding the period of limitation.[9] The statute clearly indicates "minor child" and how to toll the statue of limitation for bringing the action.[10] Again, Respondent argues that the plain meaning of the statute is set forth therein and the language is not ambiguous. *State, Div. of Ins. v. State Farm*

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[8] Opinion at page 2.
[9] Respondent's Answering Brief at page 13.
[10] *Id.*

Mut. Auto. Ins. Co., 116 Nev. 290, 293, 995 P.2d 482, 485 (2000). Therefore, this Court should not rule in a manner inconsistent with Nevada law by allowing for the first action to be brought after emancipation.

This Court stated in the Opinion,

> NRS 125B.030 provides that the physical custodial parent of a child may recover from the parent without physical custody child support for 4 years immediately preceding the filing of a support action. That statute is silent on whether a parent can file for retroactive child support under NRS 125B.030 for the first time after the child reached the age of majority.[11]

This is an error and contrary to Nevada law because Chapter 125B has a section entitled "[p]eriod of limitations." *NRS* § 125B.050. The statute is clear, and provides "[i]f there is no order for support[.]" *NRS* § 125B.050 (1). In this matter, there had been no Order for support. *NRS* § 125B.050 goes on to outline the existence of an Order in *NRS* § 125B.050 (2) and (3). The statute describes "toll[ing] the running of the statute of limitations from the bringing of an action for that [child] support." *NRS* § 125B.050 (1). Therefore, the legislative intent was clear and unambiguous. *State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co.*, 116 Nev. 290, 293, 995 P.2d 482, 485 (2000).

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[11] Opinion at page 2.

WHEREFORE, the Respondent requests the following relief:

1. That the Court rehear arguments which were overlooked, address material questions of law which were not addressed and/or correct the law which was misapplied; and
2. For such other and further relief as the Court may deem necessary and proper in the premises.

DATED this 25th day of April, 2022.

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CERTIFICATE OF COMPLIANCE (*NRAP* § 40 (4) and 32)

1. I hereby certify that this brief 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:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word, 2020 edition in 14-point Times New Roman font; or

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2. I further certify that this brief 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:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains approximately 1,749 words; or

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[X] Does not exceed 10 pages.

3. I further certify that I have read this Petition for Rehearing, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable

Nevada Rules of Appellate Procedure, in particular N.R.A.P. 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a page reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 25th day of April, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25 day of April, 2022, service of the PETITION FOR REHEARING was electronically served on the following:

Adam Breeden, Esq.
Breeden & Associates, Pllc.
Email: adam@breedenandassociates.com
Attorney for Appellant

By: _____
An Employee of Roberts Stoffel Family Law Group