

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

RONALD DAVID HARRIS,

Appellant,

vs.

JENNIFER FIGUEROA,

Respondent,

---

Docket No. 81746

District Court No. D-20-606828-C

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Appeal from Final Custody Decree

Eighth Judicial District Court of the State of Nevada  
In and for the County of Clark

The HONORABLE MATTHEW HARTER, presiding

**Respondent's Answering Brief**

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## NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following persons and entities as described in NRAP 26.1(1) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Respondent Jennifer Figueroa is an individual. In this appeal, she is represented by Denisse Ramos Esq. of the Ramos Law Firm. There is no such corporation or any publicly held company that owns 10% or more of any party's stock.

The attorneys who have appeared on behalf of respondent in this Court and in District Court are:

Denisse Y. Ramos Esq.  
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DATED this 12<sup>th</sup> Day of July 2021.

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6. *Doucettperry v. Doucettperry*, 80114-COA, WL 6445845, (2020).....10

7. *Nance v. Ferraro*, 134 Nev. 152, 158, 418 P.3d 679, 685 (Ct. App. 2018)....11

8. *Toth v. Toth*, 80 Nev. 33, 36-37, 389 P.2d 73, 75 (1964).....12

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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**  
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5 RONALD DAVID HARRIS,

6 Appellant,

7 vs.

8  
9 JENNIFER FIGUEROA,

10 Respondent,

CASE NO.: 81746

District Court No. D-20-606828-C

11 Respondents Answering Brief  
12

13 **JURISDICTIONAL STATEMENT**

14 Respondent believes appellant's jurisdictional statement is correct.  
15

16 **ROUTING STATEMENT**

17 Appellant is correct that this appeal is presumptively assigned to the Nevada  
18 Court of Appeal pursuant to NRAP, Rule 17(b)(10). The Nevada Court of  
19 Appeals presumptively has jurisdiction over the instant appeal.  
20

21 **STATEMENT OF THE CASE**  
22

23 This is an appeal from an order of the District Court granting respondent Sole  
24 Legal and Physical custody. Eight Judicial District Court, Clark County,  
25 Department N, the Honorable Mathew Harter, District Court Judge.  
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## INTRODUCTION

Respondent JENNIFER FIGUEROA (“Ms. Figueroa”) brought the underlying action asking the district court to grant her sole legal and physical custody of the parties minor children. Notwithstanding the numerous attempts to effectuate service on the Appellant RONALD DAVID HARRIS (“Mr. Harris”) through alternate means, Ms. Figueroa was able to serve Mr. Harris by mailing him the summons and complaint to his last known address.

Mr. Harris received notice of the complaint filed and submitted an Answer on May 11, 2020. The Notice of Order of Appearance for the hearing that took place on July 16, 2020, was mailed to the same address the Appellant previously received the complaint. It was not until the court entered into a custody decree awarding Ms. Figueroa sole legal and physical custody, did Mr. Harris decided to contest the order based on a single issue of notice. However, Mr. Harris has never presented any basis to question the sufficiency of service to his last known address when he continuously answered every pleading file by Ms. Figueroa since 2017. Mr. Harris wants to evade the effects of the final order by claiming ineffective service without any substance or merit.

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## STATEMENT OF FACTS

### **A. Facts Regarding Service**

On April 22, 2020, Ms. Figueroa filed a Complaint for Custody requesting sole legal and physical custody of the children. Upon receipt of the filed summons, Ms. Figueroa sought to serve the Complaint on Mr. Harris through traditional means however due to Mr. Harris current incarceration alternate means was requested. On April 30, 2020, Mr. Harris was served with the Complaint at his last known address at #584414 NECX, PO Box 5000 Mountain City, TN 37683. On the same date an affidavit of service was filed by Ms. Figueroa certifying that service was made.

Although Mr. Harris claims that Ms. Figueroa has flouted the rules of service, this is not the case. Pursuant to NRS 14.030, Ms. Figueroa effectuated service of process by sending the following documents to the defendants last known address:

- a. Complaint
- b. Exhibits
- c. Summons

Notwithstanding the claim that there was no notice, Mr. Harris managed to receive notice of the Complaint and on May 11, 2020, filed his answer certifying

1 that his address was in fact #584414 NECX, PO Box 5000 Mountain City, TN  
2  
3 37683, the same address that was used to notify him of the hearing.

#### 4 **B. Procedural Posture**

5 The custody complaint was filed on April 22, 2020. Service was made on  
6  
7 Mr. Harris on April 30, 2020 pursuant to NRS 14.030(1). The affidavit of service  
8 required by NRS 14.030(3) was filed on April 30, 2020. On May 11, 2020, the  
9 Answer was mailed to Ms. Figueroa's address and on May 18, 2020, service was  
10 posted with the district court clerk.  
11

12 On May 22, 2020, the court sent Notice of Order of Appearance For:  
13  
14 NRCP 16.205 Case Management Conference and the hearing that was set for  
15 July 16, 2020. The certificate of mailing was filed by Department N Judicial  
16 Executive Assistant. The Certificate of Mailing certified that both parties were  
17 served by via first class mail, postage fully prepaid to their last known address.  
18 On July 16, 2020, the hearing took place and the court entered into a custody  
19 decree. This appeal followed.  
20  
21  
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23

#### 24 **SUMMARY OF THE ARGUMENT**

25 Mr. Harris Due process rights guaranteed by the Fourteenth Amendment to  
26 the United States constitution and the Nevada constitution. See U.S. Const.  
27  
28

1 Amend. 14 § 1; Nev. Const. Art 1, § 8(5), were not violated because service and  
2 notice of hearing was proper. Mr. Harris certified his address with the court when  
3 he filed an answer to the complaint. The address provided by Mr. Harris was  
4 utilized to effectuate service of the hearing, providing him sufficient notice to  
5 attend the hearing and be heard. Mr. Harris failed to attend the hearing but was  
6 given an opportunity to be heard by virtue of his filed answer.  
7

8  
9 Further the district court did not err in providing Ms. Figueroa sole legal and  
10 physical custody. The court weighed the best interest factors and made a  
11 determination that vested sole custody in Ms. Figueroa. There was substantial  
12 evidence that is adequate enough to sustain a judgment and the district court's  
13 factual findings does not rise to the level of abuse of discretion.  
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## 17 18 **DISCUSSION**

### 19 20 I. The District Court Properly Provided Mr. Harris Notice and An 21 Opportunity to be Heard.

#### 22 **A. Standard of Appellate Review**

23 The issue presented before the court is whether Mr. Harris was properly served  
24 with Notice of the July 16, 2020, preserving his Constitutional right to due  
25 process.  
26  
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1 The standard set forth in Appellant's opening brief is generally correct  
2  
3 insisting that the court determine whether the District Court abused its discretion  
4 and violated Mr. Harris' right to due process when it granted sole legal custody to  
5 Ms. Figueroa. Mr. Harris claim that the court did not provide notice and an  
6 opportunity to be heard however is overly simplified and incorrect.  
7

8 Unless a review of district court's factual findings rises to the level of abuse  
9 of discretion, those findings will not be set aside unless they are clearly erroneous  
10 or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668,  
11 221 P.3d 699, 704 (2009). Substantial evidence is evidence that a reasonable  
12 person may accept as adequate to sustain a judgment. *Ellis v. Carucci*, 123 Nev.  
13 145, 149, 161 P.3d 239, 242 (2007).  
14  
15  
16

17 **B. Service and Notice of the Custody Hearing on Mr. Harris Complies**  
18 **with All Requirements of Nevada Law.**  
19

20 The Fourteenth Amendment to the United States Constitution and the  
21 Nevada Constitution both guarantee that no person shall be deprived of life,  
22 liberty or property without Due Process of law. *See* U.S. Const. Amend. 14 § 1;  
23 Nev. Const. Art 1, § 8(5). In this case the notice of a hearing regarding a parent's  
24 right to custody of their children must adhere by proper service pursuant to  
25 NRCP 5. One of the specific methods of serving a written notice, appearance,  
26  
27  
28

1 demand, offer of judgment, or any similar paper is by mailing it to the person's  
2 last known address--in which event service is complete upon mailing. NRCP  
3 5(b)(2)(C).  
4

5 Service in this case was made pursuant to NRCP 5(b)(2)(C) when the  
6 District Court mailed Mr. Harris the Notice of Order Of Appearance For: NRCP  
7 16.205 Case Management Conference that was set for July 16, 2021 at 3:30 PM.  
8 On May 22, 202, Mark Fernandez, the District Courts Judicial Executive  
9 Assistance for Department N, certified that he mailed, via first class mail, postage  
10 fully prepaid, the foregoing Notice of Case Management Conference to:  
11

12 Ronald David Harris  
13 NECX PO BOX 5000  
14 #584414  
15 Mountain City, TN 37683  
16

17 The above address was then utilized as Mr. Harris last known address.  
18

19 A thorough review of the pleadings, notices, and other documents filed in  
20 this matter demonstrate that Mr. Harris not only received case documents at the  
21 above address, but he also provided the court with this same address certifying it  
22 as his current address. Initially the complaint filed by Ms. Figueroa on April 22,  
23 2020, was served on Mr. Harris by sending it to the address above.  
24  
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26 Within 21 days after being served at the above address, Mr. Harris filed his  
27 answer on May 11, 2020, pursuant to NRCP 12. In the Certificate of Mailing Mr.  
28

1 Harris provided the court for his answer, Mr. Harris also certified that his mailing  
2 address was NECX PO BOX 5000, #584414, Mountain City, TN 37683. At no  
3 time prior to answering the complaint did Mr. Harris claim insufficient service of  
4 process or mention any issues arising out of utilizing his last known address  
5 pursuant to a NRCp 12 dismissal.  
6

7  
8 Therefore, when the court utilized the above address and deposited the  
9 Notice of Hearing in the mail on May 22, 2020, service was proper. Mr. Harris  
10 had notice and sufficient time before the July 16, 2020, hearing to assert his  
11 constitutional right to be heard. Mr. Harris however failed to be present either by  
12 video or telephonic means and at no time did he request such an appearance.  
13  
14

15 **C. Mr. Harris had an opportunity to be heard through his filed answer.**  
16

17 Mr. Harris had a meaningful opportunity to be heard by virtue of his filed  
18 answer. He provided an extensive explanation concerning the allegations made in  
19 Ms. Figueroa's complaint. In a twelve (12) page answer, Mr. Harris was able to  
20 address every claim and allegation asserted in the complaint. Mr. Harris answer  
21 was served on Ms. Figueroa and the court noted having it on the record.  
22  
23

24 Further, the district court clearly acknowledge that Mr. Harris filed answer  
25 was taken in consideration when the judge stated "I assumed that from yours and  
26 his" when referencing information regarding case jurisdiction given by both  
27  
28

1 parties. (A.A. Vol. 1 p. 2). Ms. Figueroa's only additional input heard regarding  
2 child custody was when she asked about the amount of control she has with sole  
3 legal custody. (A.A. Vol. 1 p. 5). Most of the hearing discussed child support and  
4 Mr. Harris income from his royalties. At no time during the hearing, did Ms.  
5 Figueroa give a lengthier argument or information concerning child custody. The  
6 court gave both parties equal opportunity to be heard on the child custody issue  
7 by virtue of their pleadings, the hearing merely provided a decision on those  
8 same pleadings.  
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14 II. The District Court Did Not Err in Granting Sole Legal and Sole  
15 Physical Custody to Ms. Figueroa.

16 A trial court enjoys broad discretionary powers in determining questions of child  
17 custody. An appellate court will not disturb a lower court's determinations absent  
18 a clear abuse of discretion. Moreover, in child custody matters, a presumption  
19 exists that the trial court properly exercised its discretion in deciding what  
20 constitutes a child's best interest. *Primm v. Lopes*, 109 Nev. 502, 503, 853 P.2d  
21 103, 103, (1993).  
22  
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25 A. **Sole legal custody to Ms. Figueroa is in the children's best interest.**

26 It is true that the United States Supreme Court has said parents have a  
27  
28

1 fundamental liberty interest in caring for and the custody of their children. *Troxel*  
2  
3 *v. Granville*, 530 U.S. 57, 65 (2000). However, it is also true that joint legal  
4 custody requires that the parents be able to cooperate, communicate, and  
5  
6 compromise to act in the best interest of the child. *Rivero v. Rivero*, 125 Nev.  
7 410, 420–21, 216 P.3d 213, 221 (2009).

8 NRS 125C.002 provides:  
9

10 1. When a court is making a determination regarding the legal  
11 custody of a child, there is a presumption, affecting the burden of  
12 proof, that joint legal custody would be in the best interest of a  
13 minor child if:

14 (a) The parents have agreed to an award of joint legal custody or so  
15 agree in open court at a hearing for the purpose of determining the  
16 legal custody of the minor child; or

17 (b) A parent has demonstrated, or has attempted to demonstrate but  
18 has had his or her efforts frustrated by the other parent, an intent to  
19 establish a meaningful relationship with the minor child.

20 2. The court may award joint legal custody without awarding joint  
21 physical custody.

22 The presumption in NRS 125C.002, is rebutted when the court makes  
23 findings regarding the parents’ ability to cooperate, communicate, or compromise  
24 in the best interests of their child and specific findings that sole legal custody is  
25 in the child’s best interests. *Doucettperry v. Doucettperry*, 80114-COA, 2020 WL  
26 6445845, at 6 (Nev. App. Nov. 2, 2020). “Legal custody involves having basic  
27 legal responsibility for a child and making major decisions regarding the child,  
28 including the child's health, education, and religious upbringing... Joint legal



1 requires that the parents are able to cooperate, communicate, and compromise to  
2 act in the best interest of the child.” *Id.*

3  
4 The Court found that it is impossible for Mr. Harris to have any legal  
5 responsibility for his children due to his incarceration and lengthy prison  
6 sentence. Mr. Harris would not have the ability to cooperate, communicate, or  
7 compromise in the best interest of their child and thus the court did not err in  
8 vesting sole legal custody in Ms. Figueroa. Here the sole consideration is the  
9 child’s best interests. See NRS 125C.0035(1) and(3)(a). See NRS 125C.0035(4)  
10 (providing that the court shall consider the enumerated best interest factors  
11 “among other things”); *Nance v. Ferraro*, 134 Nev. 152, 158, 418 P.3d 679, 685  
12 (Ct. App. 2018) (explaining that the statutory best interest factors provides a non-  
13 exhaustive list for the district court's consideration).

14  
15 The Nevada Supreme Court has emphasized that no single factor  
16 necessarily possesses any intrinsically greater weight than the others, and it never  
17 said that every factor must be given exactly equal mathematical weight. Quite to  
18 the contrary, it's repeatedly held that the district court possesses “broad  
19 discretionary powers” on how to weigh each factor in any particular case. *Ellis*,  
20 123 Nev. at 149, 161 P.3d at 242  
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1 When the court decided to give Ms. Figueroa sole legal custody it  
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3 rightfully used its discretion where district courts may enter an “order for the  
4 custody, care, education, maintenance and support of the minor child as appears  
5 in his or her best interest.” NRS 125C.0045(1)(a); *see also Toth v. Toth*, 80 Nev.  
6 33, 36-37, 389 P.2d 73, 75 (1964). Although the district court may entertain  
7 certain trends in family law, the district court has broad discretion to consider the  
8 parties' situations and preferences when it makes findings. See *Wallace v.*  
9  
10 *Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996)  
11

12  
13 Given that the district court provided an opportunity to be heard on the  
14 pleadings and sufficient notice of the July 16, 2020, hearing to both parties due  
15 process was clearly preserved. Further the district court effectively use its broad  
16 discretion when weighing the best interest factors and considering the parties'  
17 situations when making its findings. Therefore, there was substantial evidence  
18 that was adequate enough to sustain a judgment and the district court's factual  
19 findings does not rise to the level of abuse of discretion.  
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**CONCLUSION**

Based on the foregoing, Respondent respectfully request that this Appeal be denied, and the District Court Order be upheld.

DATED this 12<sup>th</sup> Day of July 2021.

*/s/ Denisse Ramos*

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1 the event that the accompanying brief is not in conformity with the  
2  
3 requirements of the Nevada Rules of Appellate Procedure.  
4

5  
6 DATED this 12<sup>th</sup> Day of July 2021.  
7

8 */s/ Denisse Ramos*  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Ramos Law Firm and that on this date the  
RESPONDENT’S ANSWERING BRIEF was filed electronically with the Clerk  
of the Supreme Court, and therefore electronic service was made with the master  
service list as follows:

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DATED this 12<sup>th</sup> Day of July 2021.

*/s/ Raymond Ramos*  
\_\_\_\_\_  
An Employee of the Ramos Law Firm