

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 KATRINA CARTER.
3 Appellant

4 vs.

5 RUNNDLEY DUCKSWORTH,
6 Respondent

Supreme Court No. 81966
District Court No. D550112

FILED

DEC 14 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

7 MOTION TO STAY CHANGE OF CUSTODY
8 PENDING APPEAL AND RELATED RELIEF

9 COMES NOW Appellant, in Proper Person, and respectfully requests this court
10 stay the change of custody pending appeal, as this requires the child to relocate from
11 Texas, where he has resided for over three years, and has expressed a preference
12 to remain, returning to Clark County, Nevada with his father, who he has REFUSED
13 to board the plane to go to.

14 Appellant has tried to convince the child, and now even tried to FORCE the
15 child to go, but he REFUSES to leave Texas to move with Respondent/Dad, which
16 the court ordered him to do, due to allegations that Appellant is withholding the child,
17 rather than the child, who is 14 on December 18, 2020, adamantly refusing to go.

18 This is especially concerning during the pandemic, forcing him to change
19 schools, when he already struggles with distance learning. This is especially
20 troubling because the child does not feel welcome with Respondent, and has
21 expressed that all he does is smoke marijuana and leave him with his girlfriend.

22 Appellant had requested this relief of the District Court to no avail.

23 Dated this 7 day of December, 2020.

24 /s/ KATRINA Y. CARTER

[Signature]

25 KATRINA Y. CARTER
26 Appellant in Proper Person

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28 DEC 11 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

POINTS AND AUTHORITIES
HISTORY/FACTS

This case has been litigated since 2017. Appellant has lived in the State of Texas since prior to the filing of the initial action in this matter, on 4/7/17. There is one minor child the issue of the parties, to wit: KATRON XAVIER DUCKSWORTH (DOB: 12/18/2006). The child is presently 14 years old.

The court found that the child was of sufficient age and maturity to form a preference, and the child told the FMC interviewer that he wanted to spend more time with Appellant/Mom. Appellant and the child live in Texas. The child does not want to spend his entire summer in Las Vegas, Nevada, and expressed he wanted to spend more time during the summer with Mom, and less time in Nevada with his Dad.

The court has now ordered that there be a change of primary physical custody, and this child is to not only spend summer vacation in Nevada, but to RELOCATE to Nevada as well, and the child is REFUSING to do so. Appellant has pled with the child, because she knows it would not be long before the child would end up back in Texas. He does not want to be there, he has conflict with his father and has expressed he has been abused by him.

Respondent himself has come to Texas, and he cannot physically FORCE the child to go. Because the child is adamant about remaining in Texas, Appellant has filed an Appeal, asking the Nevada Supreme Court to address her concerns about this change of custody, which is punitive, and is not in the best interest of the minor child.

The court has indicated - for the first time in his Order that changed custody - that this contempt is criminal in nature, and that it did not need to warn Appellant to retain a criminal attorney because she has a family court attorney present. Appellant believes she was entitled to notice that she was facing criminal sanctions, and that she was entitled to such notice.

Further, the EFFECT of the order being punitive to Appellant is that the Order

1 is punitive to the *child*. This was not the intent of *Lewis v. Lewis*, 132 Nev. Adv. Op.
2 46, 373 P.3d 878, 881 (2016). Thus, Appellant contends the change of custody was
3 wholly inappropriate. Thus, Appellant has appealed this court's decision.

4 It is NOT in the child's best interest to be uprooted from Texas, where he wants
5 to be, to Nevada and his father where he DOES NOT want to be.

6 The change of custody does not appear based upon the child's best interest, but
7 instead, on the criminal punishment of Appellant.

8 Appellant contends that much of Respondent's allegations were nothing more
9 than hearsay. The court held it against Appellant that she did not provide Respondent
10 a report card, even after acknowledging "He now communicates with the child's
11 teachers through the school's application." [Findings of Fact, Conclusions of Law
12 and Order, Page 6, lines 10-11]

13 Respondent made allegations repeatedly, including that the child was picked
14 up in July, 2020, and a gun was pointed at him. In spite of this wild accusation being
15 completely fabricated - and no police report, no CPS involvement, no mention of this
16 is his motion, it does not appear the court questioned Respondent's veracity: only
17 Appellant's veracity.

18 There are numerous instances in the Order filed 9/24/2020 that do not
19 substantiate that a change of custody is in the child's best interest. The child is
20 refusing to move.

21 In fact, the issue of whether this court should have deferred jurisdiction due to
22 the child living in Texas for over three years, and Texas being a more convenient
23 forum pursuant to the UCCJEA will also be raised on appeal. Pursuant to NRS
24 125A.365, the court was entitled to do so on its own motion, as Nevada is an
25 inconvenient forum at this time.

1 In this matter, however, Appellant is not in contempt of court because she is
2 not withholding the child. The child REFUSES to get on the plane, knowing this is
3 a change of custody. Appellant will not physically beat the child into submission.

4 Appellant requests this court to stay the order for change of custody and child
5 support, in the best interest of the minor child.

6 First and foremost, the child should NOT be uprooted in the middle of a school
7 year at any time, but especially during a school year where he has been forced to learn
8 on line, and THEN to also be switched to a completely new system. Even if a change
9 of custody was best for the child, which Appellant disputes, it would be within the
10 authority of this court to do so during a mid-term or better yet, during the end of the
11 school year.

12 Appellant has appealed the District Court
13 s decision to change custody. If she should prevail, and the child is relocated, he will
14 be AGAIN relocated to Texas upon finalization. If the matter is remanded for any
15 reason, including a procedural matter, Appellant would seek the child to be returned
16 to Texas pending further order of the court, and that jurisdiction be relinquished to
17 Texas as Nevada is an inconvenient forum.

18 Thus, to set aside the court's feelings that Appellant is in contempt of court for
19 not providing past visitation, which is purely punitive to the child, Appellant
20 respectfully requests pending appeal, and the end of the school year, that the child
21 remain in Texas and in her custody.

22 Appellant respectfully requests this court make a decision expeditiously, and
23 on the papers, as the court has all the facts before it already.

24 **NRCP 8 - REQUEST FOR STAY PENDING APPEAL**

25 (a) Motion for Stay.

26 (1) Initial Motion in the District Court. A party must ordinarily move first in the
27 district court for the following relief:

1 (A) a stay of the judgment or order of, or proceedings in, a district court
2 pending appeal or resolution of a petition to the Supreme Court or Court of Appeals
for an extraordinary writ;

3 (B) approval of a supersedeas bond; or

4 (C) an order suspending, modifying, restoring or granting an injunction while
an appeal or original writ petition is pending.

5 (2) Motion in the Court; Conditions on Relief. A motion for the relief mentioned
in Rule 8(a)(1) may be made to the Supreme Court or the Court of Appeals or to one
of its justices or judges.

6 (A) The motion shall:

7 (i) show that moving first in the district court would be impracticable; or

8 (ii) state that, a motion having been made, the district court denied the motion
or failed to afford the relief requested and state any reasons given by the district court
for its action.

9 (B) The motion shall also include:

10 (i) the reasons for granting the relief requested and the facts relied on;

11 (ii) originals or copies of affidavits or other sworn statements supporting facts
subject to dispute; and

12 (iii) relevant parts of the record.

13 (C) The moving party must give reasonable notice of the motion to all parties.

14 (D) In an exceptional case in which time constraints make consideration by
a panel impracticable, the motion may be considered by a single justice or judge.

15 (E) The court may condition relief on a party's filing a bond or other
appropriate security in the district court.

16 A. REQUEST FOR STAY.

17 In requesting a stay, the court must consider the following factors: (1) whether
18 the object will be defeated if the stay or injunction is denied; (2) whether Petitioner
19 will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether
20 Respondent will suffer irreparable or serious injury if the stay or injunction is
granted; and (4) whether Appellant is likely to prevail on the merits in the appeal.

21 Appellant believes her matter has merit and indicates as follows:

22 1. The object of the action will be defeated if the stay or injunction is denied.

23 Appellant believes the object of the appeal will be defeated if the stay or
24 injunction is denied. The child will be RELOCATED to a state he has not resided
25 in for over three years; and his wishes of spending more time with Appellant would
26 be ignored - solely to punish mother based upon the court's belief of criminal
27 contempt for which she was not notified to retain CRIMINAL COUNSEL. There are

1 already issues with the child's education that will not miraculously be resolved by
2 pulling him from a school district he knows to a different one - during COVID19.
3 Texas schools have resumed, and the child's issues were with doing school on the
4 computer - which the Nevada schools continue to do. Further, child support should
5 be stayed with the stay of change of custody.

6 **2. Whether Appellant will suffer irreparable or serious injury if the stay or**
7 **injunction is granted.**

8 Appellant - but more importantly, the CHILD - would suffer irreparable harm
9 if the stay is not granted. The child should not be whipped from one school to
10 another in the middle of the year, especially during COVID19, or where he is going
11 to classes live in Texas, to computer class in Nevada. This is a step back, and will
12 irreparably affect his education.

13
14 **3. Whether Respondent will suffer irreparable or serious injury if the stay or**
15 **injunction is not granted?**

16 Respondent will not suffer irreparable harm. If the Supreme Court feels that
17 a change of custody is appropriate in spite of the facts and evidence, this would only
18 delay the change a matter of months.

19
20 **4. Whether Appellant is likely to prevail in this matter.**

21 Appellant believes she will prevail. She believes the court is punishing the
22 child for perceived wrongdoing of the Appellant. She believes that a change of
23 custody is not in the best interest of the child considering all factors. Appellant
24 believes the fact that the child is of sufficient age to express his preference, and that
25 he lives out of state should be given more weight than it was. Perhaps this court
26 should have even directed that the matter be domesticated in Texas, with the
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1 EVIDENCE relating to the child is found. Further, the child is adamant about not
2 going back to Nevada. His life is in Texas. There is concern for the welfare of the
3 child.

4 **CONCLUSION**

5 Based upon these facts, Appellant requests the court stay the change of custody
6 pending the end of the school year; and until the decision of the Nevada Supreme
7 Court.

8 DATED and DONE this 7 day of December, 2020.

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11 KATRINA Y. CARTER
12 Appellant in Proper Person
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Supreme Court No. 81966
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VS.

RUNNDLEY DUCKSWORTH,
Respondent

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