

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

KATRINA CARTER,

Appellant,

v.

RUNNDLEY DUCKSWORTH,

Respondent.

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Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court No.: 81966

District Court No.: D-17-550112-C

**RESPONSE TO MOTION TO STAY CHANGE OF CUSTODY PENDING  
APPEAL AND RELATED RELIEF**

COMES NOW, Respondent, Runndley Ducksworth, by and through his attorney, Ashlee Vazquez, Esq. of McFarling Law Group, and hereby requests an Order denying Appellant's Motion to Stay Change of Custody Pending Appeal and Related Relief. This Opposition is based upon the Memorandum of Points and Authorities, the Declaration of Ashlee Vazquez, Esq., and all other papers and pleadings on file herein.

DATED this 8th day of January, 2021.

**MCFARLING LAW GROUP**

*/s/ Ashlee Vazquez*

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## MEMORANDUM OF POINTS AND AUTHORITIES

### II. STATEMENT OF FACTS

Appellant, Katrina Carter, and Respondent, Runndley Ducksworth, have one (1) minor child in common: Katron Ducksworth, born December 14, 2006, age 14.

In 2010, the parties came to an agreement that reflected a joint legal custody and joint physical custody arrangement of Katron in their child support case. However, in 2017, Katrina filed a motion to relocate to Texas although she had already moved to Texas with Katron without Runndley or the court's permission.

At the August 1, 2017 evidentiary hearing, the court granted Katrina's motion to relocate and awarded Katrina primary physical custody of Katron, subject to Runndley's visitation.<sup>1</sup> The Order from the August 1<sup>st</sup> hearing does not provide any written findings as to how the court came to its decision.<sup>2</sup> Notably, however, the court reprimanded Katrina and told her that she had to comply with the court's orders and that if she violated the court's orders, the court could change its mind and require Katron to move back to Las Vegas.<sup>3</sup>

Unfortunately, the parties returned to court numerous times as a result of Katrina depriving Runndley of his court ordered visitation with Katron, not allowing

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<sup>1</sup> See Court minutes, 08/01/2017, in Case No. D-17-550112-C.

<sup>2</sup> See Order, filed 09/17/2017, in Case No. D-17-550112-C.

<sup>3</sup> *Id.*

Runndley reasonable phone contact with Katron, and not providing Runndley with updated addresses and health and school information for Katron.

On February 27, 2020, after two (2) years of violations from Katrina, Runndley filed a Motion to Enforce and/or For an Order to Show Cause Regarding Contempt. The basis for Runndley's Motion was that Katrina did not allow Katron to stay with Runndley for the full 2019 Thanksgiving break and did not send Katron for the 2<sup>nd</sup> half of the 2019 Winter break, as required under their custody agreement.<sup>4</sup>

On April 20, 2020, the court granted Runndley's Motion and issued an Order to Show Cause against Katrina.<sup>5</sup>

On May 1, 2020, Runndley filed another Motion to Enforce and/or For an Order to Show Cause Regarding Contempt. This time because Katrina did not send Katron for Spring break 2020, nor did she send Katron for his Summer 2020 visit.<sup>6</sup> At the June 9, 2020 hearing, the court continued the Order to Show Cause and ordered Katrina to bring Katron to Las Vegas within seven (7) days and for Katron to stay with Runndley until school started in order to compensate Runndley for his

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<sup>4</sup> See Motion to Enforce and/or For an Order to Show Cause regarding Contempt, filed 02/27/2020, in Case No. D-17-550112-C.

<sup>5</sup> See Order Granting Order to Show Cause and Setting Hearing, filed 04/20/2020, in Case No. D-17-550112-C.

<sup>6</sup> See Motion to Enforce and/or For an Order to Show Cause regarding Contempt, filed 05/01/2020, in Case No. D-17-550112-C.

missed visits with Katron.<sup>7</sup> The court also set an evidentiary hearing on Runndley's request to modify physical custody for September 15, 2020.<sup>8</sup>

Thereafter, Katrina brought Katron to Las Vegas within the timeframe ordered by the court. However, on July 26, 2020, Katrina called Katron and told him to leave Runndley's house without his knowledge.

After Katrina essentially kidnapped Katron from Runndley's house, on July 29, 2020, Runndley filed a Motion to Modify Custody, seeking temporary sole legal custody and sole physical custody of Katron until the court made a final order regarding a permanent modification of custody. This was heard at the Calendar Call and set as an issue for the evidentiary hearing on September 15, 2020.

At the evidentiary hearing, evidence was presented, testimony was provided, and arguments were heard by the court, and the court indicated that it would issue its decision at a later time. On September 23, 2020, the court issued its Findings of Fact, Conclusions of Law and Order.<sup>9</sup> The court found that it had jurisdiction in this case given that Katrina had not sought Texas to assert UCCJEA jurisdiction as the home state of the child.<sup>10</sup> The court also found that the "evidence indicates, beyond a reasonable doubt that Katrina failed, on several occasions, to comply with this

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<sup>7</sup> See Court minutes, 06/09/2020, in Case No. D-17-550112-C.

<sup>8</sup> *Id.*

<sup>9</sup> See Findings of Fact, Conclusions of Law and Order, 09/23/2020, in Case No. D-17-550112-C.

<sup>10</sup> *Id.*

court's orders relating to Runndley's visitation."<sup>11</sup> The court further found that Katrina did not provide credible evidence that her violations of the orders were not willful, and that Runndley established, beyond a reasonable doubt, that Katrina violated the orders.<sup>12</sup> As such, the court found that Katrina was in contempt of the September 19, 2017 and August 4, 2020 Orders of the court.<sup>13</sup>

With regard to a modification of custody, the court analyzed the best interest factors under NRS 125C.0035 and found the following:

- The child is 13 years old. The child is of sufficient age and capacity to form an intelligent preference as to his physical custody. Katrina stated that she believes the child is capable of choosing. The child expressed, within his August 17, 2020 FMC interview report, that he is not happy with the current time-share arrangement. He desires to spend more time with Katrina. This factor favors Katrina.
- No nomination occurred in this case.
- Since relocating to Texas, and contrary to suggestions by two different courts, Katrina has stood in the way of Runndley's court-ordered visitation. The communication between the parents, contained in Exhibit 6, indicates that Katrina either refuses to respond to requests or simply does not permit contact. Even between the initial hearing when the evidentiary hearing was set and the evidentiary hearing, Katrina essentially kidnapped the child during Runndley's visitation time and did not return the child. There is some indication that Katrina had difficulty communicating with the child while in Runndley's care as well. Ultimately, this factor favors Runndley.
- There is a substantial amount of conflict in this case. Previously it was based on child support issues, and since relocation, it has focused on visitation issues. Katrina is a poor communicator. Runndley's responses do not help the situation. While Katrina's actions typically initiate conflict, this factor favors Runndley.

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

- Katrina indicates that she will provide information “when asked.” However, her role as primary physical custodian requires more than that. She says she is now able to cooperate. Runndley indicated that Katrina refuses to respond to his requests for information regarding the child. This factor is neutral.
- Neither party indicated any health issues. Therefore, this factor is neutral.
- It should be noted that Katrina was not cooperative with Runndley’s visitation prior to her allegations of abuse. The court is concerned that the child must sleep on a couch at Katrina’s residence and, as a teenager, has no privacy. There is also concern about Katrina’s continual efforts to limit the child’s healthy contact with Runndley. This factor favors Runndley.
- Katrina discussed her relationship with the child as a good mother/child relationship. She states that she is the only parent taking care of the child. Runndley described his relationship as good. They like going outside and on vacations. Runndley did state that the child does not like discipline. Ultimately, this factor is neutral.
- The child has a half-sister and half-brother in Runndley’s household with whom the child has a good relationship. No siblings in Katrina’s home were referenced. Therefore, this factor favors Runndley.
- No evidence was presented concerning this factor.
- Katrina is concerned that the child is being abused while with Runndley. The child’s only reference to any issue was “the time that my dad grabbed me.” No credible evidence of abuse was presented concerning this factor. This factor is neutral.
- Katrina’s actions, in direct contravention of a specific court-order in July 2020 is concerning. It is more concerning that it occurred while under the court’s microscope, with an Order to Show Cause for similar behavior pending. Katrina’s abduction of the child is consistent with her pattern for violating Runndley’s ability to maintain a healthy relationship with the child. This factor favors Runndley.<sup>14</sup>

Based on the court’s analysis, the court found that Runndley met his burden of establishing that it would be in Katron’s best interest to modify custody.<sup>15</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

While the court ordered that Katrina was found to be in contempt of the court's orders relating to Runndley's visitation time with the child;<sup>16</sup> the court would not issue a sanction for the contempt, other than compensatory time, which Runndley was to receive as a result of the custodial change.<sup>17</sup> The court also ordered that Runndley's motion to modify physical custody was granted and that it was in the best interest of the child that he be awarded primary physical custody, with the change in custody occurring on or before October 11, 2020.<sup>18</sup> Katrina was awarded visitation.<sup>19</sup>

Katrina filed a Notice of Appeal on October 16, 2020.

At a hearing on November 5, 2020 hearing, the Court granted Runndley's request for a pick-up order and denied Katrina's request to stay Runndley's motion "as there is no basis, the decision regarding the child's best interest is the same."<sup>20</sup>

As of today's date, Katron is now in Runndley's custody and care in Las Vegas.

### **III. LEGAL ARGUMENT**

#### **A. The Motion for Stay in the District Court was Denied.**

Katrina filed a motion for stay in the district court; however, it was denied "as there is no basis, the decision regarding the child's best interest is the same."

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

**B. The Motion for Stay in this Court Should be Denied.**

The factors the court must consider when deciding whether to issue a stay in a child custody case are:

- (1) whether the child(ren) will suffer hardship or harm if the stay is either granted or denied;
- (2) whether the nonmoving party will suffer hardship or harm if the stay is granted;
- (3) whether movant is likely to prevail on the merits in the appeal; and
- (4) (4) whether a determination of other existing equitable considerations, if any, is warranted. NRAP 8(d).

Respondent will address each factor herein:

**1. The child will suffer hardship or harm if the stay is granted.**

Here, Katron was living with Katrina in Texas since 2017. During the trial, evidence was presented that while in Katrina's primary custody in Texas, Katron missed a lot of school, had been suspended from school multiple times, and failing classes.

Under Runndley's primary physical custody in Las Vegas, Runndley can keep a close eye on Katron and ensure that Katron focuses on school and exceeds academically, regardless if school is online or in person. Clearly, Katron is not getting the structure and discipline that he needs while in Katrina's care, as she works all the time leaving Katron to care for himself. Katrina even testified that in Texas, Katron does his online school with his friends and his teachers are the ones who ensure that his schoolwork gets done.



**2. The nonmoving party will suffer hardship or harm if the stay is granted.**

Here, Runndley will suffer hardship or harm if the stay is granted. As discussed above, Katrina has prevented Runndley from seeing and speaking to Katron on multiple occasions and most recently from July 2020 just until recently. Additionally, as a result of Katrina's actions, Runndley and Katron's parent-child relationship has been negatively impacted. If the stay is granted, this will only further hurt their parent-child relationship.

**3. The movant will not prevail on the merits of the appeal.**

Here, Katrina will not prevail on the merits of this appeal. Katrina states that she believes the court is punishing Katron for her perceived wrongdoing and that she believes a change in custody is not in the best interest of the child, as the child is of sufficient age to express his preferences and that he wishes to stay with Katrina in Texas. Katrina, who was represented by counsel, at ample time to list Katron as a witness or request child testimony by alternative means. She waited until the beginning of trial to motion the court for Katron to testify at trial. Such motion was rightfully denied. The district court proceeded and made substantial findings as to the best interest factors. Moreover, the court was clear that while it made contempt findings, the decision to award Runndley primary physical custody of Katron was made on the very specific best interest findings, not because of contempt.

**4. There are no other equitable considerations warranted.**

Here, there are no other equitable considerations warranted. The district court has given Katrina multiple chances to comply with the court's order. However, Katrina has failed to do so.

Based on the foregoing, the stay should be denied.

**C. The Nevada Court Has Jurisdiction Over the Minor Child**

Nevada has exclusive, continuing jurisdiction of Katron pursuant to NRS 125A. 315 as Runndley has continued to reside in Nevada since the initial determination. Nevada is not an inconvenient forum under NRS 125A.365.

**IV. CONCLUSION**

Based on the foregoing, the Court should deny Appellant's Motion to Stay Change of Custody Pending Appeal and Related Relief.

DATED this 8th day of January, 2021.

**MCFARLING LAW GROUP**

*/s/ Ashlee Vazquez*

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**DECLARATION OF ASHLEE VAZQUEZ, ESQ.**

I, Ashlee Vazquez, Esq., declare under penalty of perjury under the laws of the State of Nevada that the following is true and correct:

1. I represent the Respondent in the above-entitled case.
2. I have read the attached Opposition and know the contents thereof; the same is true of my own knowledge, except for those matters stated upon information and belief and, as to those matters, I believe them to be true.

I declare under penalty of perjury, under the laws of the State of Nevada and the United States (NRS 53.045 and 28 USC § 1746), that the foregoing is true and correct.

DATED this 8th day of January, 2021.

**MCFARLING LAW GROUP**

*/s/ Ashlee Vazquez*

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*Rundley Ducksworth*

**CERTIFICATE OF SERVICE**

I, an employee of McFarling Law Group, hereby certify that on the 8th day of January, 2021, I served a true and correct copy of Response to Motion to Stay Change of Custody Pending Appeal and Related Relief as follows:

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

Katrina Carter  
969 W. Cartwright Rd. #101  
Mesquite, TX 75149

*/s/ Alex Aguilar*  
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Alex Aguilar