

FILED

MAY 03 2021

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

1 Ali Shahrokhi
2 10695 Dean Martin Dr. #1214
3 Las Vegas, NV 89141
4 (702) 835-3558
5 Alibe76@gmail.com
6 In Proper Person

IN THE SUPREME COURT OF NEVADA

7 ALI SHAHROKHI,)
8 Appellant,) Case No.: 81978
9) District Court Case No.: D-18-581208-P
10 vs.)
11 KIZZY BURROW,)
12 Respondent.)
13)

14 **MOTION FOR STAY FOR LACK OF**
15 **SUBJECT-MATTER JURISDICTION, VIOLATION OF**
16 **CONSTITUTION & EQUAL PROTECTION RIGHTS &**
17 **VIOLATION OF SUSBTANTIVE AND PROCEDURAL DUE**
18 **PROCESS.**

19 ALI SHAHROKHI ("ALI"), in proper person, respectfully submits this
20 Motion for Stay as the lower court lacked subject-matter jurisdiction,
21 **VIOLATED** Shahrokhi's substantive due process and procedural du process
22 rights fully protected by U.S. Constitution, refused to declare on the record
23 what jurisdiction or authority the Court has to infringe upon Shahrokhi's
24 fundamental liberty interest, without declaring Shahrokhi "UNFIT" or holding a
25 fitness hearing, has NOT applied strict scrutiny as mandated by federal law,
26 refused to adjudicate pre-trial objections prior to trial and violated appellants
27 14th amendment rights to a fair judiciary buy having a criminal judge presiding

RECEIVED

MAY 03 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

21-12640

over the case. This motion and the points and authorities submitted herewith is made in good faith and not to delay justice.

DATED this 2nd day of May, 2021.

Authentisign
Ali Shahrokhi
5/3/2021 8:15:47 AM PDT
Ali Shahrokhi

10695 Dean Martin Dr. #1214
Las Vegas, NV 89141
(702) 835-3558
Alibe76@gmail.com
In Proper Person

ALI respectfully requests “STAY” on Orders issued by the District Court at the 3 days trial held on 9/21,9/22,9/23/2020 Trial including but not limited to its AMENDED DECISION AND ORDER RE: FINDINGS OF DOMESTIC VIOLENCE, issued on 9/22/2020 and its FINAL DECISION AND ORDER RE: CUSTODY/RELOCATION issued on 10/12/2020. He further requests that Judge Harter be disqualified and/or divested of any jurisdiction over his case in future proceedings or remand. This includes any judgments entered in the underlying case.

Ali has had no visitation with B.E.S (the minor) for 22 months now, have missed 3 of his birthdays including 12th birthday which was just on 5/1/2021 the state of Nevada has ignored parental rights as fundamental liberty interest and under NRS 126.036.

At issue in this case is the constitutionality of Nevada Custody Statues that permits a court to interfere with a parent’s right to direct the care, custody, and control of the children solely because the other parent is requesting from the Court, and without first holding a fitness hearing to declare the parent as “UNFIT”.

Second issue at hand is Lower Court lacking subject-matter jurisdiction as Shahrokhi challenged the court's jurisdiction on the record before trial on 9/11/2020 as ***"DEFENDANT'S MOTION REQUESTING RESOLUTION OF ESSENTIAL PRE- TRIAL, QUESTIONS OF LAW, MOTION RAISING OBJECTIONS AND PLEA TO THE JURISDICTION."***(See V.17 Pages 3384-3400,V.18 P.3401-3425) this motion was **NEVER** adjudicated before trial.

Third issue at hand, is the lower court's violation of Shahrokhi's and minor's child substantive due process rights that were completely ignored by the lower court which were raised right before the trial and the lower court completely violated such due process rights.

NEVADA CUSTODY STATUTE PROBLEM

Shahrokhi's first argument is that the Nevada Custody Statutes and discretion in such given to judges are unconstitutional because it allows courts to infringe the rights of unadjudicated parents to direct the care, custody, and control of their children without an adjudication that those parents are ***UNFIT***.

The lower court has not pursued any allegations against Shahrokhi, despite his demand for a fitness hearing to declare Shahrokhi UNFIT, however district court terminated Shahrokhi's parental rights regardless of how the lower court has labled or spinned off its final order. Shahrokhi has no visitation, no legal rights to his son without first being declared UNFIT and that is in ***violation of constitution***. A mother asking the court in a custody dispute does not authorizes the court to infringe upon Shahrokhi;s fundamental liberty interest and does not allow the judge to have discretion in regards to the care, custody and control of Shahrokhi's minor child.

Shahrokhi's fitness was never the subject of any hearing, and he Has NEVER been adjudicated as UNFIT.

Nevertheless, the court refused to allow Shahrokhi physical and legal custody of the minor and instead ordered him to comply with physiological evaluation which itself is in violation of Shahrokhi's constitutional rights under Forth Amendment, search and seizure.

Shahrokhi contends that this process— at work—is forbidden by Constitution.(To be clear, Shahrokhi's parental rights were not and have not been terminated properly. Nevertheless, temporary deprivation of custody is an "intrusion into the family sphere," Hunter v Hunter, 484 Mich 247, 269; 771 NW2d 694 (2009), and plainly infringes on Shahrokhi's constitutional rights as a parent, see Troxel, 530 US at 68 (opinion by O'Connor, J.) (Recognizing that parental rights are implicated in grandparent-visitation cases).

Stanley (405 US) is plain that Shahrokhi's right to direct the care, custody, and control of his child is a fundamental right that cannot be infringed without some type of fitness hearing.

Nevada needs to recognize, the importance of the private interest at stake here—a parent's fundamental right to direct the care, custody, and control of his or her child free from governmental interference—cannot be understated. (Second private interest that is always relevant in child protective proceedings—the child's interest in his or her own welfare. If a parent is unfit, the child's interest aligns with the state's parens patriae interest. On the other hand, the child also has an interest in remaining in his or her natural family environment. In which direction the child's interest preponderates cannot be known without first a specific adjudication of a parent's unfitness, as "the State

cannot presume that a child and his parents are adversaries.” Santosky, 455 US at 760. Rather, only “[a]fter the State has established parental unfitness . . . [may] the court . . . assume at the dispositional stage that the interests of the child and the natural parents do diverge.”Id.

The state must adjudicate a parent’s fitness before interfering with his or her parental rights. Stanley, 405 US at 658.

When the state seeks only to deprive one parent of the right to care, custody and control, the state must be required to adjudicate that parent as UNFIT.

In this case, for example, there was no constitutional or jurisdictional impediment to disrupting the parental rights of Shahrokhi, therefore the final order is UNCONSTITUTIONAL and it infringes upon Shahrokhi’s fundamental liberty interest to *direct the care, custody, and control of his child.*

Fitness Adjudication protects the parents’ fundamental right to direct the care, custody, and control of their children, while also ensuring that the state can protect the health and safety of the child

But as the United States Supreme Court made clear in **Eldridge**, constitutional rights do not always come cheap. The Constitution does not permit the state to presume rather than prove a parent’s unfitness “solely because it is more convenient to presume than to prove.” Stanley, 405 US at 658. Judge’s blanket statement of concern for the minor carries NO MERRIT without a proper fitness hearing giving notice to Shahrokhi to defend against any allegations against him.

Due process requires a specific adjudication of a parent’s unfitness before the state can infringe the constitutionally protected parent-child relationship.(See In Re: Sanders, Michigan 2014, EN

BANC) In doing so, Justices In Re Sanders announce no new constitutional right. Rather, we affirm that an old constitutional right—a parent’s right to control the care, custody, and control of his or her children—applies to everyone, which is the very nature of constitutional rights. Justice in this case deprive a parent of this fundamental right without any finding that he or she is unfit, it is an unconstitutional violation of the Due Process Clause of the Fourteenth Amendment.

POINTS AND AUTHORITIES

1) Shahrokhi Challenged Family Court Jurisdiction

On 9/11/20, Shahrokhi challenged the jurisdiction of Family court in a motion and asked the court to declare its jurisdiction on the record, yet the lower court IGNORED the motion and the challenge.(See V.17 P.3384-3400, V.18 P.3401-3425)

Jurisdiction is not a fiction of which that can be created, it cannot be manufactured nor can its limitations be circumvented merely to suit the exigencies of the moment.

Jurisdiction is the cornerstone of the entire judicial process; without it, courts have no power to decide the merits of a controversy. The absence of jurisdiction is so serious that it is one of the few defects of which that cannot be waived even by consent of all the parties.

The law requires proof of jurisdiction to appear on the record of the administrative agency and all administrative proceedings. See, Hagans vs Lavine 415 U. S. 533.

The burden shifts to the court to prove jurisdiction. See Rosemond vs Lambert, 469 F2d 416. See, Blessing v. Freestone, 520 U.S. 329 (1997).

Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits, but, rather, should dismiss the action. See, Melo vs US, 505 F2d 1026.

The law provides that once State and Federal Jurisdiction has been challenged, it ***MUST*** be proven on the record. See, Main vs Thiboutot, 100 S. Ct. 2502 (1980).

Since lower court did not prove jurisdiction before trial, it lacked subject matter jurisdiction to decide and preside at the 3 days trial on 9/21,9/22, 9/23/20.

Substantive and procedural guarantees applicable to the rights at issue in these proceedings being afforded.

On 9/11/20 Shahrokhi via a motion filed into the district court asked the Court REQUESTING RESOLUTION OF ESSENTIAL PRE- TRIAL, QUESTIONS OF LAW, MOTION RAISING OBJECTIONS, yet this motion was IGNORED by the lower court and violated Shahrokhi's substantive and procedural due process.

Shahrokhi requested the lower court to issue a protective order and quash any request by Respondent that this court take judicial state action in the absence of all substantive and procedural guarantees applicable to the rights at issue in these proceedings being afforded.

Shahrokhi asked the lower Court to resolve the following questions of law 1) whether the parties to this child custody dispute between fit parents are entitled to the substantive protections associated with the First, Fourth, and Fourteenth Amendment rights at issue in custody proceedings; 2) whether the parties are entitled to the procedural protections of an Eldridge balancing test; 3) whether the parties are entitled to obtain a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law; 4) whether the parent-child association that litigants have with their child is an intimate and expressive close family association protected by the First Amendment; 5) whether Respondent's petition asks this court to impose time, place, or manner prior restraints on Shahrokhi's speech, association, and worship with

Shahrokhi's child; 6) whether Respondent's petition asks this court to impose content-based prior restraints; 7) whether the litigants' parent child association rights are individual rights independent of the marital status of the litigants or of changes in that status; and 8) whether the child has standing to have its "best interests" or any other interests asserted by the judge or by any appointed officer in these proceedings?

The lower court again abused its discretion and capriciously ignored Shahrokhi's substantive and procedural due process protected By the constitution, and without any subject matter jurisdiction continued to the trial.(See V.22 P.4296-4298)

2) Child Custody Litigation Burdens Fundamental Rights

The United States Supreme Court has held that subjecting a parent to child custody litigation is sufficiently burdensome on the right to be constitutionally significant. This holding establishes that this Court must establish a constitutionally compliant threshold condition that justifies the imposition of child custody litigation upon parents who enter these proceedings with full and equal fundamental rights to their child and who must be presumed to be fit and who must be presumed to be acting in their own child's best interest.

3) Palmore Standard

The United States Supreme Court has held in a child custody modification case between fit parents incident to divorce that the trial court is a state actor acting under color of state law and consequently limited by the federal constitution, that a trial court's viewpoint regarding the best interest of a child is insufficient justification to infringe fundamental rights, and that there are harms to children that are non-justiciable in custody cases.

4) Harm to the child

Children face all sorts of harm in life that is non-justiciable. Nothing inherent in these proceedings authorizes this Court to hold these litigants to a different standard of harm in childcare than is applied to fit married parents. The parents' constitutionally protected privacy choices regarding marriage and family living arrangements cannot be punished or burdened by presuming they can convey authority to this Court to create standards of harm that apply only to these litigants. The best interest of the child standard does not provide judicial authority to create ex post facto determinations of what constitutes harm to a child. The best interest of the child standard does not provide judicial authority for this Court to define harm based on this Court's own viewpoint regarding matters of conscience in child-rearing.

5) First Amendment

SCOTUS has held that family relationships are protected by the First Amendment because intimate associations cannot exist without expression of intimacy which necessarily makes these associations both intimate and expressive. Final Order of the lower court is in direct violation of Shahrokhi's and his minor child First Amendment rights.

6) Ali's Motion for Stay Should Be Granted Because a Judgment May NOT be Rendered in Violation of Constitutional Protections.

The validity of a judgment may be affectedly a failure to give the constitutionality required due process notice an opportunity to

be heard. *Earle v. McVeigh*, 91 US 503, 23 L Ed 398.

The limitation of inherent in the requirements of due process and equal protection of the law extend to judicial as well as political branches of government, so that a judgment may not be rendered in violation of those constitutional limitations and guarantees. See *Hanson V Denckla*, 357. 2 L Ed 2d 1283, 78 S Ct 1228.

7) Strict Scrutiny

Restrictions on liberty interests are subject to strict scrutiny. “[T]he Fourteenth Amendment ‘forbids the government to infringe fundamental liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest,’ ” [e.g., *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997), (alteration omitted), (*italics in original*), quoting *Reno v. Flores*, 507 U.S. 292, 302, (1993)].

District Court made no inquiry into whether the revocation of Shahrokhis’ custodial rights was “narrowly tailored to serve a compelling state interest,” [see, *Glucksberg*, *supra*].

8) Irreparable Harm Defined

Irreparable harm is traditionally defined as harm For which there is no adequate legal remedy, such as an award of damages,” [*Ariz. Drea Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014)]. Here, the harm to Plaintiff—and his son—is “irreparable.” Money damages do not suffice.

9) NARP RULE 8 (2)(D) REQUIRMENT IN CONFLICT WITH CONSTITUTION!

Parental rights are fundamental rights, they are NOT absolute however my constitutions rights are 100% protected and guaranteed to

me. To infringe upon my fundamental rights State has to go through the Strict Scrunity prongs as stated above, Since such is protected by constriction and state has FAILED to apply them, Shahrokhi does not need to do the NARP 8 prong when there is a minor involved.

It is my right to have my equal rights protected to a 50/50 joint physical and legal custody unless the state has shown on the record I am "UNFIT", which the state has not, or the state can demonstrate the child is in harm and danger and again state has FAULED to do both.

The burden is on the state to show their interest, my rights are protected and I do NOT have the burden to proof why my constitutional rights are guaranteed. It is presumed Statutes are INVALID.

10)VOID ORDERS CAN BE ATTACKED ANY TIME

An order that exceeds the jurisdiction of the court, or voidable, and can be attacked in any proceeding in any court where the validity of the judgment comes into issue. (See Rose v. Himley (1808) 4 Cranch 241, 2 L ed 608; Pennnoyer v. Neff(1877)).

A void judgment is not entitled to the respect accorded a valid adjudication, but may be entirely disregarded, or declared inoperative by any tribunal in which effect is sought to be given to it. (See 30A Am Jur Judgments" 44,45).

Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question. (Earl v. McVeigh, 91 US 503, 23 L Ed 398.

Conclusion

Lower Court did not prove its jurisdiction on the record as it was challenged before the trial, therefore it lacked subject matter jurisdiction to continue with the Trial. Lower Court also has no jurisdiction to infringe upon Shahrokhi's parental rights before declaring Shahrokhi UNFIT in a fitness hearing mandated by law, therefore it has ZERI authority to issue any such orders and enforce those orders.

Lower Court did not adjudicate the pretrial objections and law concerns about the Substantive and procedural due process, therefore it completley has violated Shahrokhi's due process right guaranteed under the 1st and 14th Amendment rights.

42 USC §1983 provides that every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Relief Requested

In accordance with the foregoing, ALI respectfully requests that this Court enter

A) An Order granting an stay that will prevent Judge Harter from continuing on this case on remand;

B) An Order requests that all proceedings starting from 9/21/2020 be stayed, as to revert back to the stipulated custody agreement on 1/3/2019,

1 to prevent further irreparable harm from occurring to the minor and
2 Shahrokhi. This includes all judgments entered;

3 C) An Order remanding the matter for NEW TRIAL immediately;

4 D) An Order immediately returning the minor to State of Nevada as
5 It violated Shahrokhi's Equal Protection Rights;

6 Entered in this action on the 2nd day of May, 2021
7

8 Authentisign
Ali Shahrokhi
9 5/3/2021 8:15:48 AM PDT

10 Ali Shahrokhi
11 10695 Dean Martin Dr. #1214
12 Las Vegas, NV 89141
13 (702) 835-3558
14 Alibe76@gmail.com
15 *In Proper Person*

16 **AFFIDAVIT of Ali Shahrokhi**

17 My name is Ali Shahrokhi. I am a litigant before the court. All of the
18 allegations herein are true and correct of my own personal knowledge. If called
19 upon to testify, I could and would give competent and truthful evidence.

20 I hereby declare under penalty of perjury under the laws of the State of Nevada the
21 foregoing is both true and correct.

22 Dated: May 2nd, 2021

23 Authentisign
Ali Shahrokhi
24 5/3/2021 8:15:49 AM PDT

25 **Ali Shahrokhi**

26 *Declarant.*
27
28

-CERTIFICATE-OF-SERVICE-

I am an individual over the age of eighteen and not a party to the within action. My home address is 10695 Dean Martin Dr. #1214, Las Vegas, Nev. 89141. My phone number is (702)835-3558.

On **May 2nd, 2021**, I served the following:

"Motion for Stay"

On an interested party in the above-entitled action by
☒ via e-mail transmission,
☐ personal service on the person below listed,
☒ depositing it in the U.S. Mail, postage prepaid,
and addressed to the person below listed,
☐ overnight delivery, addressed as follows:

**Mathew Harter, District Court Judge
601 N. Pecos Rd.
Las Vegas, NV 89101**

**Yvonne Ruiz
170 S Green Valley Pkwy. #300
Henderson, NV 89012**

I declare under penalty of perjury under Nevada law the foregoing is true and correct.

Dated: **May 2nd, 2021.**

Ali Shahrokhi

Form **COL**

Violation Warning
Denial of Rights Under Color of Law

► Violation Warning—18 U.S.C. §242; 18 U.S.C. §245; 42 U.S.C. §1983

Name and address of Citizen

Ali Shahrokhi. (SC CASE # 81978, 82245)
10695 Dean Martin Dr. #1214
Las Vegas, NV. 89141

Name and address of Notice Recipient

Justice James W. Hardesty
201 South Carson st. # 201
Carson City, Nevada 89701

Citizen's statement:

You are violating my First Amendment right and my son's First Amendment rights under privacy rights, equal protection rights, freedom of religion rights, freedom of speech rights by enforcing an "UNCONSTITUTIONAL ORDER" that state of Nevada has FAILED to pass. Fundamental Liberty of Parenting is associated with 1st Amendment and gets enhanced protection.

I certify that the forgoing information stated here is true and correct.

Citizen's signature

► Ali Shahrokhi

Date ► 4/23/2021

Legal Notice and Warning

Federal law provides that it is a crime to violate the Rights of a citizen under the color-of-law. You can be arrested for this crime and you can also be held personally liable for civil damages.

Attempting to cause a person to do something by telling that person that such action is required by law, when it is not required by law, may be a felony.

18 USC §242 provides that whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States ... shall be fined under this title or imprisoned not more than one year, or both.

18 USC §245 provided that Whoever, whether or not acting under color of law, intimidates or interferes with any person from participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States; [or] applying for or enjoying employment, or any perquisite thereof, by any agency of the United States; shall be fined under this title, or imprisoned not more than one year, or both.

42 USC §1983 provides that every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Warning, you may be in violation of Federal Law and persisting with your demand may lead to your arrest and/or civil damages! Also understand that the law provides that you can be held personally responsible and liable, as well as your company or agency.

You are advised to cease and desist with your demand and to seek *personal* legal counsel if you do not understand the law.

Notice of Service:

I, Ali Shahrokhi certify that I personally delivered this notice to above named recipient and address on 201 S Carson St, 89701 at Via Certified mail.

Public Domain—Privacy Form COL(01)

SC CASE # 81978

THIS IS A NOTICE TO INTEND TO FILE A 'CLAIM'.

SEE FELDER V. CASEY U.S. 131 (1988)

