

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Feb 17, 2021 10:38 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

ANTHONY JACOB MONAHAN,

Appellant,

CASE NO. 82031

v.

AMANDA KAITLYN HOGAN, fka  
AMANDA KAITLYN KING,,

Third Judicial District Court  
Case No. 15-CV-00418

Respondent.

RESPONDENT'S APPENDIX

Roderic A. Carucci, Esq. (#4233)  
Kelly A. VandeBurgt, Esq. (#13270)  
Carucci and Associates  
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*Attorneys for Respondent Amanda Hogan*

**Respondent's Appendix  
(Chronological)**

Date	Description	Appendix Number
7/24/2015	Order After June 19, 2015 Hearing	RA0001 - RA0008
10/26/2015	Stipulation and Order Regarding Child Custody, Support and Visitation	RA0009 - RA0014
8/29/2018	Motion to Modify Custody Based Upon Status Quo	RA0015 - RA0023
3/29/2019	Notice of Appeal	RA0024 - RA0025
4/9/2019	Motion to Dismiss Appeal	RA0026 - RA0049
9/4/2019	Order Dismissing Appeal	RA0050 - RA0052
6/9/2020	Motion to Relocate	RA0053 - RA0072
10/28/2020	Notice of Appeal	RA0073 - RA0086

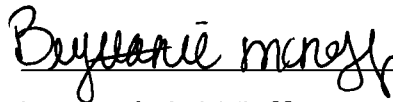
**Respondent's Appendix  
(Alphabetical)**

Date	Description	Appendix Number
4/9/2019	Motion to Dismiss Appeal	RA0026 - RA0049
8/29/2018	Motion to Modify Custody Based Upon Status Quo	RA0015 - RA0023
6/9/2020	Motion to Relocate	RA0053 - RA0072
3/29/2019	Notice of Appeal	RA0024 - RA0025
10/28/2020	Notice of Appeal	RA0073 - RA0086
7/24/2015	Order After June 19, 2015 Hearing	RA0001 - RA0008
9/4/2019	Order Dismissing Appeal	RA0050 - RA0052
10/26/2015	Stipulation and Order Regarding Child Custody, Support and Visitation	RA0009 - RA0014

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b) and NRAP 25, I certify that I am an employee of  
3 Carucci and Associates and on February 17, 2021, I served a true and correct  
4 copy of **Respondent's Appendix**, with the Clerk of the Nevada Supreme Court  
5 via the Court's e-Flex system. Service will be made by e-Flex, on all registered  
6 participants. A copy will also be mailed and emailed to the parties below.

7  
8 Nicholas C. Palmer, Esq.  
9 630 East Plumb Lane  
10 Reno, Nevada 89502  
11 nik@lawlaub.com

12   
13 Bryttanie McNeff  
14 Carucci and Associates  
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Case No.: 15-CV-00418

Dept. No.: II

This Document Does Not Contain The Personal Information Of Any Person. \_\_\_\_\_

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TANYA DEURNE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Tanya Deurne*  
DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR LYON COUNTY

ANTHONY JACOB MONAHAN,

Petitioner,

vs.

AMANDA K. KING,

Respondent.

ORDER AFTER JUNE 19, 2015 HEARING

THIS MATTER came before the Court for a regularly scheduled hearing and for a Case Management Conference on June 19, 2015. The Petitioner was present and was represented by Leann Schumann, Esq. The Respondent was represented by Jennifer S. Anderson, Esq. The Court heard testimony from the parties and other witnesses, and heard argument from counsel. Deeming itself fully advised of the matter, the Court hereby makes the following Findings of Fact:

FINDINGS OF FACT

The parties are the parents of Malakai Jacob Monahan, born July 18, 2012. Nevada is the home state of the minor child.

It is in the best interest of the child for the parties to share the temporary joint legal custody of the minor child.

The Court has concerns in that evidence has been introduced that: 1) the Petitioner has

1 committed domestic violence; 2) the Petitioner may have an alcohol issue; and 3) the  
2 Petitioner may have a tendency towards violence. The Court cannot make a final ruling in  
3 these issues until discovery is complete and a final hearing is heard on the matter. Due to the  
4 nature of these allegations the Court concludes that the following custody/visitation schedule  
5 is appropriate until the time of the Final Hearing.

6 IT IS THEREFORE ORDERED that the parties shall share the joint legal custody of  
7 the minor child.

8 Legal custody is separate and distinct from physical custody. The court may determine  
9 each separately. NRS 125A.045; *Rivero v. Rivero*, 125 Nev. Adv. Op. 35, 10 (August 27,  
10 2009).

11 Legal custody involves having basic legal responsibility for a child and making major  
12 decisions regarding the child, including those related to health, education, and religious  
13 upbringing. *Rivero v. Rivero*, 125 Nev. Adv. Op. 35, 10 (August 27, 2009); *Mack v. Ashlock*,  
14 112 Nev. 1062, 1067 (1996) (Shearing, J., concurring). Joint legal custody requires the  
15 parents to cooperate, communicate, and compromise to meet the best interests of their child.  
16 *Id.* In joint legal custody, the parents must consult with each other to make major decisions  
17 regarding the child's upbringing. *Id.* at 10. When the parents with joint legal custody reach  
18 an impasse so that they cannot agree, they may petition the court to decide what is in the best  
19 interests of the child. *Id.*

20 In application, a parent with joint legal custody would have the right to access a child's  
21 school, health care, day care and other records. It also means that the parent would have input  
22 into decisions about where the child will attend school, what doctors she might see, what  
23 health care she might receive, and what type of church or religious institution the child would  
24 attend. It also means that joint legal custodians must keep the other parent informed of the  
25 child's physical address, mailing address, and contact information - including a telephone  
26 number and (if applicable) any electronic form of communication (including email, myspace,  
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1 blog, or the like).

2 Conversely, a person without legal custody would not have the authority to access  
3 school, health care, or other records, and would not have to be consulted or consent to  
4 decisions about the child's education, health care, or religious training.

5 In cases of joint legal custody, both parents must consult with each other on matters  
6 regarding the child's education, health care, religious training, and welfare. If the parties  
7 disagree, they should attempt to resolve the difference in a fair and reasonable manner. The  
8 parties understand that co-parenting means that each parent has rights and responsibilities  
9 towards the child, and that each parent must act in the best interests of the child.

10 As joint legal custodians, each parent may have direct access to all the child's records,  
11 including but not limited to education and medical records. Each parent should also list the  
12 other as a parent or contact-person with the child's school, extra-curricular activities, and the  
13 like. The court clarifies that, although step-parents may be listed as contacts for the children,  
14 the biological parents should be listed as the primary or secondary contact above the step-  
15 parent.

16 The court recognizes that the parent with whom a child resides usually makes minor  
17 day-to-day decisions. *Rivero v. Rivero*, 125 Nev. Adv. Op. at 10. However, if one parent  
18 assumes a primary role with the child's school, health, religion, extra-curricular activities, or  
19 the like, then that parent is responsible for providing the other parent with information,  
20 documentation, and contact information relevant to that activity. For example, the residential  
21 parent should promptly provide copies of all schedules (school and sports), provide copies of  
22 teacher updates (like a weekly report), and copies of doctor's evaluations or prescriptions.  
23 This provision does not abridge the other parent's right to independently consult with any  
24 person related to the children's activities, including teachers, principals, coaches, doctors, and  
25 the like.

26 IT IS FURTHER ORDERED that Ms. King shall have the temporary primary physical  
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1 custody of the minor child. Mr. Monahan's visitation shall be as follows:

2 The first, second, and third weekends of each month, commencing at noon on Fridays  
3 and continuing until 7:00 p.m. Sundays.

4 Thursdays from 5:00 p.m. until 7:00 p.m.

5 The second and third Wednesdays in July, August, and September, from 5:00 p.m.  
6 until 7:00 p.m.

7 Alternating holidays, with the holidays being defined as 9:00 a.m. to 7:00 p.m. on the  
8 day of the holiday.

9 Skype visitations each Tuesday at 7:30 p.m.

10 IT IS FURTHER ORDERED that Mr. Monahan shall pay child support in the amount  
11 of \$576 per month, commencing July 1, 2015, and due on the first day of the month in each  
12 month after. All unreimbursed medical expenses shall be equally divided according to the  
13 "30/30 Rule." The 30/30 Rule is defined as follows: The party incurring the expense shall  
14 submit copies of the Explanation of Benefits to the other party within thirty (30) days, and  
15 the other party shall reimburse the expense within thirty (30) days of receipt of the  
16 Explanation of Benefits.

17 The parent providing insurance will sign all necessary HIPPA forms with their  
18 insurance company giving permission for the non-insured parent to access the children's  
19 information.

20  
21 NOTICE IS HEREBY GIVEN OF THE FOLLOWING PROVISIONS  
22 OF NRS 125.510(6) regarding abduction, concealment or detention of a child:

23 PENALTY FOR VIOLATION OF ORDER:

24  
25 THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION  
26 OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN

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1 NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to  
2 a child or any parent having no right of custody to the child who willfully detains, conceals  
3 or removes the child from a parent, guardian or other person having lawful custody or a right  
4 of visitation of the child in violation of an order of this court, or removes the child from the  
5 jurisdiction of the court without the consent of either the court or all persons who have the  
6 right to custody or visitation is subject to being punished for a category D felony as provided  
7 in NRS 193.130.

8 The State of Nevada is the habitual residence of the child.

9 **NOTICE IS HEREBY GIVEN** that the terms of the Hague Convention of October 25,  
10 1980, adopted by the 14th Session of the Hague Conference on Private International Law,  
11 apply if a parent abducts or wrongfully retains a child in a foreign country.

12 The parties are also put on notice of the following provisions in NRS 125.510(8):

13 If a parent of the child lives in a foreign country or has significant commitments in a  
14 foreign country:

15 (a) The parties may agree, and the court shall include in the order for custody of the  
16 child, that the United States is the country of habitual residence of the child for the purposes  
17 of applying the terms of the Hague Convention as set forth in subsection 7.

18 (b) Upon motion of one of the parties, the court may order the parent to post a bond  
19 if the court determines that the parent poses an imminent risk of wrongfully removing or  
20 concealing the child outside the country of habitual residence. The bond must be in an amount  
21 determined by the court and may be used only to pay for the cost of locating the child and  
22 returning him to his habitual residence if the child is wrongfully removed from or concealed  
23 outside the country of habitual residence. The fact that a parent has significant commitments  
24 in a foreign country does not create a presumption that the parent poses an imminent risk of  
25 wrongfully removing or concealing the child.

26 The parties are informed that NRS 125C.200 provides as follows:  
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1 If custody has been established and the custodial parent or a parent having joint  
2 custody intends to move his residence to a place outside of this state and to take the child with  
3 him, he must, as soon as possible and before the planned move, attempt to obtain the written  
4 consent of the other parent to move the child from the state, If the noncustodial parent or other  
5 parent having joint custody refuses to give that consent, the parent planning the move shall,  
6 before he leaves the state with the child, petition the court for permission to move the child.  
7 The failure of a parent to comply with the provisions of this section may be considered as a  
8 factor if a change of custody is requested by the noncustodial parent or other parent having  
9 joint custody.

10 **NOTICE IS HEREBY GIVEN** that the parties to this matter are subject to the  
11 provisions of NRS 31A and 125.450 regarding the collection of delinquent child support  
12 payments.

13 **NOTICE IS HEREBY GIVEN** that NRS 125.450 provides that every order for the  
14 support of a child issued or modified after January 1, 1990, must include an order directing  
15 the withholding or assignment of income for the payment of the support unless one of the  
16 parties demonstrates and the court finds good cause for the postponement of the withholding  
17 or assignment or all parties otherwise agree in writing. Such an order for withholding or  
18 assignment must be carried out in the manner provided in chapter 31A of NRS for the  
19 withholding or assignment of income.

20 **NOTICE IS HEREBY GIVEN** that NRS 125B.145 provides that an order for the  
21 support of a child must, upon the filing of a request for review by (a) The Welfare Division  
22 of the Department of Human Resources, its designated representative or the district attorney,  
23 if the Welfare Division or the district attorney has jurisdiction in the case; or (b) A parent or  
24 legal guardian of the child, be reviewed by the court at least every 3 years pursuant to this  
25 section to determine whether the order should be modified or adjusted.

26 NRS 125B. 145 also provides that an order for the support of a child may be reviewed  
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1 at any time on the basis of changed circumstances. A change of 20 percent or more in the  
2 gross monthly income of a person who is subject to an order for the support of a child shall  
3 be deemed to constitute changed circumstances requiring a review for modification of the  
4 order for the support of a child.

5 **NOTICE IS HEREBY GIVEN** that NRS 425.510 provides that a person in arrears  
6 in the payment of support may have his/her drivers license suspended. A person is in arrears  
7 in the payment for the support of one or more children if he/she owes a total of more than  
8 \$1000.00 for the support of one or more children for which payment is past due; and is  
9 delinquent for not less than 2 months in payments for the support of one or more children or  
10 any payments ordered by a court for arrears in such payments; or has failed to provide medical  
11 insurance for a child as required by a court order.

12 **NOTICE IS HEREBY GIVEN** that pursuant to NRS 125.450, a parent responsible  
13 for paying child support is subject to NRS 31A.020 to 31A.240, inclusive, and Sections 2 and  
14 3 of Chapter 31A states that if child support payments are 30 days late, a wage assignment  
15 shall be made.

16 **IT IS SO ORDERED.**

17 Dated this 24<sup>th</sup> day of July, 2015.

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21 DISTRICT JUDGE  
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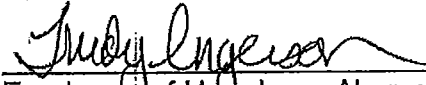
**CERTIFICATE OF SERVICE**

I hereby certify that I, TRUDY INGERSON, am an employee of  
The Honorable LEON ABERASTURI, District Judge, and that on this date, pursuant  
to NRCP 5(b), I deposited for mailing at Yerington, Nevada, a true copy of the  
foregoing document addressed to:

Jennifer Anderson, Esq.  
212 E. Washington Street  
Carson City, NV 89701

Leann Schumann, Esq.  
107 N. Main Street  
Yerington, NV 89447

DATED: This 24<sup>th</sup> day of July, 2015.

  
Employee of Hon. Leon Aberasturi

1 CASE NO. 15-CV-00418

2 DEPT. NO. II

FILED  
2015 OCT 26 AM 8:46TANYA SLEBIE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Andrea Andersen, DEPUTY

3  
4  
5 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF LYON

7  
8 ANTHONY JACOB MONAHAN,

9 Plaintiff,

STIPULATION AND ORDER REGARDING  
CHILD CUSTODY, SUPPORT AND  
VISITATION

10 vs.

11 AMANDA KAITLYN KING,

12 Defendant.  
13

14 The parties appeared before the Court for a Settlement Conference on August 27<sup>th</sup>, 2015.  
 15 With the assistance of the Court, the parties settled all outstanding issues in this case and placed the  
 16 matter upon the record. The parties were duly canvassed by the Court and represented that they each  
 17 understood the settlement, agreed to be bound by the settlement, and had an adequate opportunity  
 18 to discuss this settlement with counsel. Plaintiff, Anthony Jacob Monahan ("Father"), was present  
 19 and represented by counsel, LeAnn E. Schumann, Esq. of Wayne A. Pederson, P.C.; Defendant,  
 20 Amanda Kaitlyn King, was present and represented by counsel, Jennifer S. Anderson, Esq.; the Court  
 21 having reviewed the settlement reached by the parties and the Court being fully advised in the  
 22 premises, the Court hereby enters its Order Regarding Child Custody, Support and Visitation.

FINDINGS OF FACT

24 1. The Plaintiff and Defendant engaged in a domestic relationship in the State of  
 25 Nevada that produced one (1) minor child, namely, MALAKAI JACO MONAHAN, born July 18,  
 26 2012, and said minor child has resided in the State of Nevada since birth.

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2. Plaintiff, Anthony Jacob Monahan, who is over the age of eighteen (18) years, resides at 306 Mt. View Street in Yerington, Nevada 89447. Defendant, Amanda Kaitlyn King, who is over the age of eighteen (18) years, resides at 316 N. West Street in Yerington, Nevada 89447.

#### CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Court now enters the following Conclusions of Law:

1. The Court has personal jurisdiction over the parties and the subject matter.
2. That the Court has jurisdiction over the minor child under NRS 125A.305.
3. That, pursuant to NRS 125C.010, the State of Nevada is the habitual residence and "home state" of the minor child.

#### CHILD CUSTODY, SUPPORT AND VISITATION

From the foregoing Findings of Fact and Conclusions of Law, the Court now enters its Order regarding Child Custody, Support and Visitation which becomes effective upon the Father's completion of an Anger Management Evaluation as well as his successful completion of twenty-six (26) Anger Management classes. Said conditions will be satisfied upon proof (Certification of Completion of twenty-six (26) Anger Management classes and an additional Anger Management Evaluation) being filed with this Court. Until said conditions are satisfied, the Order After June 19, 2015 Hearing, filed in this Court on July 24<sup>th</sup>, 2015, remains in effect.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That the parties are fit and proper persons to share joint legal and joint physical custody of the minor child, namely, MALAKAI JACO MONAHAN, born July 18, 2012.
2. The parties shall have an alternating week on/week off visitation schedule with the parties minor child. Commencing the first Sunday after the above-said conditions are met, Mother shall have visitation for the first week, with the parents alternating every other week thereafter. Exchanges will occur Sunday evening at 6 P.M.. The parent receiving the minor child for custody or visitation will provide transportation, the cost associated with the transportation and will be responsible for picking up the minor child at the other parent's residence.

1 3. During the weeks in which Mother has the minor child, Father will have one evening  
2 of visitation which will not exceed three (3) hours in length and will not last beyond 7:30 P.M.,  
3 Father will give Mother twenty-four (24) hours notice of his intent to exercise said visitation. This  
4 evening visitation also applies to Mother when Father is exercising his week of visitation, subject  
5 to the same conditions.

6 4. Each parent shall have reasonable telephone contact with the minor child during their  
7 non-custodial times.

8 5. Should Father's work schedule vary, wherein he is working additional days, Mother  
9 will keep the child for the additional days Father is working. Both parties agree to accommodate  
10 visitation with the minor child around each other's respective work schedules.

11 6. During Mother's weeks of visitation, if Father is available during said time, Father  
12 will be given the opportunity to watch the child while Mother is working. If/when this occurs, Father  
13 agrees not to take the child to his grandfather's residence.

14 7. Father agrees not to consume alcohol during his regular weeks of visitation with  
15 the minor child.

16 8. The issue of child support will be determined by the child support court pursuant to  
17 applicable laws and procedures.

18 9. The following holiday visitation schedule applies:

19 a. Mother shall exercise visitation of the minor child for Thanksgiving on all  
20 odd numbered years, and Father shall exercise visitation of the minor child  
21 on all even numbered years, from Thursday at 12:00 p.m. through Sunday at  
22 8:00 p.m..

23 b. Commencing in 2015 and every odd year thereafter, the Father shall have the  
24 minor child for the Christmas holiday, from Christmas Eve at 8:00 a.m.  
25 through Christmas Day at 8:00 p.m., alternating between the parties each  
26 year, with Mother enjoying the 2016 Christmas holiday and every even year  
27 thereafter.

28 ///

- c. Mother shall have the minor child over the New Year's holiday during odd number years, and Father shall exercise visitation with the child on all even number years. Said visitation will commence at 2 p.m. New Year's Eve through 8 p.m. on New Year's Day.
- d. Father shall have the minor child for Easter on all odd numbered years, and Mother shall have him on all even numbered years. Said visitation will commence at 8 a.m. the Saturday preceding Easter and last until 8 p.m. on Easter Sunday.
- e. Mother shall have the minor child for the Fourth of July on all even numbered years, and Father shall have him on all odd numbered years. Said visitation will last from 8 a.m. to 8 p.m. on the Fourth of July.
- f. Upon the child beginning school, Father shall have the minor child over the Spring Break holiday on all odd numbered years, and Mother shall have him on all even numbered years. This holiday shall commence after school on the Friday preceding Spring Break and will conclude on the following Saturday at 4:00 p.m..
- g. Father shall have the minor child each and every year for every Father's Day. Father's Day visitation shall be an uninterrupted twenty-four (24) hour period of time.
- h. Mother shall have the minor child each and every year for Mother's Day. Mother's Day visitation shall be an uninterrupted twenty-four (24) hour period of time.
- i. Mother shall have the child during the child's birthday, on all even years and Father on all odd years, from 8:00 a.m. to 8:00 p.m..
- j. "Holiday Custody" shall pre-empt all other periods of custody and neither party shall be entitled to make-up time as a result of the same.

10. The parties understand that this visitation schedule is a minimum, and may be adjusted as agreed upon between the parties.

1 11. Neither party shall disparage the other in the presence of the minor child. Neither  
2 party will allow any third party to disparage the other, while in the presence of the minor child.

3 12. Either party may travel outside of the state with the minor child during his or her  
4 visitation/custodial period provided that the traveling party has informed the other party of his or her  
5 whereabouts including the address where the child will be staying, the contact telephone number and  
6 duration of the trip. Neither parent may travel outside of the country with the minor child without  
7 the prior written consent of the other parent.

8 13. The parties minor child is currently covered by Medicaid. Should at any time, he no  
9 longer be eligible for Medicaid, Father agrees to insure the child through his employer and maintain  
10 health insurance on the child as long as such coverage is available through his employer at a  
11 reasonable cost. Each parent shall be equally responsible for one-half of the medical insurance  
12 premiums not covered by the insuring parent's employer. The parties shall be equally responsible  
13 for one-half of all normal and customary medical, surgical, dental, orthodontia and optical expenses  
14 incurred on behalf of the minor child not covered by health and accident insurance, until such time  
15 as the minor child reaches eighteen (18) years of age, if no longer enrolled in High School, otherwise  
16 when the minor child reaches nineteen (19) years of age, or sooner becomes emancipated or dies.

17 14. Each parent shall submit claims for repayment of unreimbursed medical expenses to  
18 the other parent within thirty (30) days of receipt of the explanation of benefits or payment of the bill  
19 if there is no insurance coverage. Failure to submit a claim for reimbursement to the other parent for  
20 payment within thirty (30) days of receipt, as set forth above, waives that claim. Upon receipt of a  
21 claim for reimbursement, the obligor parent shall make payment within thirty (30) days of receipt  
22 of the demand. Failure to make payment as set forth herein shall be deemed a contempt of court.

23 15. Mother shall claim the minor child on her federal income tax return for the year  
24 2015, with the parties alternating thereafter, until the child can no longer be claimed. Neither parent  
25 will be allowed to claim the minor child in any year that he/she owes the other parent child support  
26 arrears.

27 16. Each parent shall be responsible for their own attorney's fees and costs incurred in  
28 this child custody proceeding.

1 17. NOTICE IS HEREBY PROVIDED to the parties that they are subject to N.R.S.  
2 31A.101 and 31A.340, inclusive, regarding the withholding or assignment of wages and  
3 commissions for the non-payment or delinquent payments of child support if either party is obligated  
4 in the future to pay child support.

5 18. PENALTY FOR VIOLATION OF ORDER:


6 THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION  
7 OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS  
8 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any  
9 parent having no right of custody to the child who willfully detains, conceals or removes the child  
10 from a parent, guardian or other person having lawful custody or a right of visitation of the child in  
11 violation of an order of this Court, or removes the child from the jurisdiction of the Court without the  
12 consent of either the Court or all persons who have the right to custody or visitation is subject to being  
13 punished for a Category D felony as provided in NRS 193.130.

14 19. NOTICE IS HEREBY GIVEN that pursuant to the provision of NRS 125.510(7), the  
15 terms of the Hague Convention of October 25, 1980, adopted by the 14<sup>th</sup> Session of the Hague  
16 Conference on Private International Law, apply if a parent abducts or wrongfully retains a child in  
17 a foreign country.

18 DATED This 26<sup>th</sup> day of October, 2015.

19   
20 DISTRICT JUDGE

21 APPROVED BY:

22   
23 JENNIFER S. ANDERSON, ESQ.  
24 Attorney for Defendant  
25  
26  
27  
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FILED

2018 AUG 29 AM 11:03

TANYA SCORINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

ANDREA ANDERSEN DEPUTY

1 CASE NO.: 15-CV-00418

2 DEPT. NO: 2

3 The undersigned hereby affirms this document  
4 does not contain a social security number.

5  
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7  
8 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF LYON

10  
11 ANTHONY JACOB MONAHAN,

12 Plaintiff,

13 vs.

14 AMANDA KAITLYN HOGAN fka  
15 AMANDA KAITLYN KING,

16 Defendant.

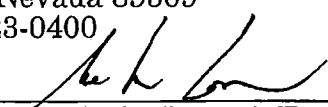
MOTION TO MODIFY CUSTODY

BASED UPON STATUS QUO

17 Amanda Hogan ("Mother"), by and through counsel, Roderic A. Carucci, Esq. and  
18 the law firm of Carucci and Associates, moves the Court to modify custody based upon  
19 changes in the status quo since entry of the last custodial order on October 26, 2015. This  
20 motion is made and based upon all the pleadings and papers on file herein, the following  
21 memorandum of points and authorities, and the attached supporting affidavit of Amanda  
22 Hogan.

23 DATED: August 28, 2018

24 Carucci and Associates  
25 702 Plumas Street  
26 Reno, Nevada 89509  
27 775-323-0400

28 By:   
Roderic A. Carucci, Esq.  
Attorney for Amanda Hogan

**MEMORANDUM OF POINTS AND AUTHORITIES**

The parties were never married. The parties have one minor child the issue of their relationship: Malakai Jaco Monahan, born July 18, 2012. Nevada is the home state and habitual residence of the minor child. At the time the last custodial order was entered both parties resided in Yerington. The child presently attends Yerington Elementary School.

A temporary "Order After June 19, 2015 Hearing" awarded Amanda Hogan ("Mother") temporary primary physical custody because the Court had concerns that Anthony Monahan ("Father"): "had committed domestic violence", "may have an alcohol issue", and "may have a tendency towards violence." The last and final custodial order was entered on October 26, 2015 by stipulation at a Settlement Conference. That Order awarded the parties joint legal and joint physical custody conditioned upon Father completing 26 Anger Management classes and an Anger Management Evaluation. Father completed these conditions in December, 2015. Joint legal and joint physical custody has been the order of the Court since. Despite a gross disparity in the incomes of the parties, child support has not been addressed by the Court.

Since entry of the last Court Order there have been numerous changes in the circumstances of the parties:

1. Father has changed jobs repeatedly. Father presently works for a mining company in the Humboldt County, Nevada area and is out of town for weeks at a time for work. While Father has very infrequent communication with Mother, his text messages indicate that he is out of town for two continuous weeks and then returns to Yerington for approximately one week; a three week cycle, but this has often been subject to change for no explained reason. Father simply contacts Mother when he is in Yerington and demands the child on an apparently erratic schedule.

2. Mother has recently married Brandon Hogan, a pilot in the United States

1 Navy, who is currently stationed in Fallon, Nevada, as a flight instructor. Mother now  
2 resides in Fallon, Churchill County, Nevada, with her new husband.

3  
4 3. Father continues to reside with his girlfriend, Samantha Morrison. Mother  
5 has previously obtained two TPOs against Samantha Morrison based upon assaults and  
6 stalking in 2015 and 2016.

7  
8 4. Mother has kept a log of Father's visitation time exercised since December,  
9 2017. For the past 9 months, Father has had the child for a total of 74 days, or 27% of the  
10 time as set forth below:

11	December, 2017	8 days
12	January, 2018	7 days
13	February, 2018	4 days
14	March, 2018	6 days
15	April, 2018	11 days
16	May, 2018	6 days
17	June, 2018	11 days
18	July, 2018	12 days
19	August, 2018	9 days
20	TOTAL	74 DAYS / 274 DAYS = 27%

21 5. The child still attends 1<sup>st</sup> grade in Yerington Elementary School. Mother  
22 estimates that it is about 65 miles each way to deliver Malakai to school each day; 130  
23 miles round trip. This creates a time and monetary hardship for Mother as Father  
24 provides no support for his child. The hardship is exacerbated by the fact that Mother has  
25 the child 73% of the time.

26 6. The last Court Order provided that the child was insured by Medicaid and  
27 should the child no longer be eligible for Medicaid in the future "Father agrees to insure  
28 the child through his employer and maintain health insurance on the child." Certainly,  
Father is eligible to obtain medical insurance for the child, but he either has never done  
so, or he has never notified Mother and provided her with medical insurance cards.

1 Mother's new Husband can and will provide medical insurance for the child through  
2 the United States Navy. The unreimbursed cost of such coverage is minimal, but it should  
3 be ordered that Mother provide coverage as long as it is available through her new  
4 husband's employer and that each party be obligated for one half of such cost.

5 Father fails and refuses to pay any portion of unreimbursed medical expenses for  
6 the minor child. Mother has borne the entire cost. Malakai is enrolled in T-ball and  
7 football. He misses practices because Father refuses to take him during his custodial  
8 time. This negatively impacts Malakai's game performance. The picture painted here is  
9 of a dead beat dad, who sees his son when he is in the mood to do so.

10 It is appropriate that the Court:

11 A. Recognize the status quo and award Mother primary physical custody;

12 B. Enter an Order allowing Mother to enroll the child in the Churchill County  
13 Public Schools which generally having higher standardized testing scores than the schools  
14 in Lyon County;

15 C. That the Court address child support and require the parties to file current  
16 financial declarations with the Court. While Father's current gross monthly income is  
17 unknown, miners typically earn \$75,000 to \$90,000 per year. Mother is employed as an  
18 office manager for an internet company with a gross monthly income of \$3,000.

19 D. That Mother should be allowed to provide medical insurance coverage  
20 through her new Husband's employer with Father to pay one half of the premiums not  
21 covered by the employer.

## 22 23 LAW

### 24 Custody

25 If the parties share joint physical custody of the minor children, the custodial  
26 standard is set forth by *Truax v. Truax*, 110 Nev. 437, 874 P.2d 10 (1994), which provides  
27 that the best interests of the child standard applies to joint physical custody determina-  
28 tions. NRS 125C.0035 provides the standards to be addressed by the Court in making a

1 custodial determination:

2 4. In determining the best interest of the child, the court  
3 shall consider and set forth its specific findings concerning,  
4 among other things:

5 (a) The wishes of the child if the child is of sufficient age and  
6 capacity to form an intelligent preference as to his or her  
7 physical custody.

8 The child is of insufficient age for this factor to be a consideration.

9 (b) Any nomination of a guardian for the child by a parent.

10 N/A

11 (c) Which parent is more likely to allow the child to have  
12 frequent associations and a continuing relationship with the  
13 noncustodial parent.  
14 Both parents have been able to negotiate custody, visitation and exchanges.

15 (d) The level of conflict between the parents.

16 The level of conflict is not high because Father fails to communicate and co-  
17 parent.

18 (e) The ability of the parents to cooperate to meet the needs  
19 of the child.

20 Father does not communicate or cooperate to meet the needs of the child. He  
21 sees the child when he is in the mood. He cannot be bother to support his child. He will  
22 not inconvenience himself to take the child to outside activities.

23 (f) The mental and physical health of the parents.

24 N/A

25 (g) The physical, developmental and emotional needs of the  
26 child.

27 N/A

28 (h) The nature of the relationship of the child with each  
parent.

The child has a good relationship with both parents.

(i) The ability of the child to maintain a relationship with  
any sibling.

N/A

(j) Any history of parental abuse or neglect of the child or a  
sibling of the child.

1 Mother has obtained two TPOs against Father's live in girlfriend as set forth  
2 above.

3 (k) Whether either parent or any other person seeking  
4 physical custody has engaged in an act of domestic violence  
against the child, a parent of the child or any other person  
residing with the child.

5 The Court noted in its temporary order that there were prior acts of domestic  
6 violence and a history of alcoholism. Under previous case law this would have been  
inadmissible. However, the very recent case of *Nance v. Ferraro*, 134 Nev. Adv. Op. 21  
7 (April 5, 2018) overrules *McMonigle v. McMonigle* and *Castle v. Simmons* regarding  
admissibility of evidence of domestic violence which occurred prior to last custodial order.  
8 A party cannot relitigate old evidence of domestic violence, but the court must consider its  
prior holdings on the subject. A party may also raise the issue of domestic violence  
defensively in a motion to change custody.

9 (l) Whether either parent or any other person seeking  
10 physical custody has committed any act of abduction against  
11 the child or any other child.

12 N/A

13 Under the present circumstances, there is a material change in circumstance. For  
14 the past 9 months Father, at his own election, has had the child only 27% of the time; this  
15 does not comport with the legal standard to joint physical custody. Mother has regularly  
16 been inconvenienced to accommodate Father's last minute demands for visitation. Even  
17 so, Father has only had the child for 27% of the time. Had Mother adhered to a more rigid  
18 visitation schedule, as set forth in this Court's Order of October 26, 2015, Father would  
19 have had even less time with his son. *Rivero v. Rivero*, 125 Nev. 410, 16 P.3d 213 (2009),  
20 sets forth a rule establishing joint custody as being the exercise of 40% or more custodial  
21 time when the parties have unequal time. The *Rivero* rule was modified to reduce rigidity  
22 of 40% rule by *Bluestein v. Bluestein*, 131 Nev. Adv. Op. 14, 345 P.3d 1044 (March 26,  
23 2015). Even under the *Bluestein* test, Father does not qualify as a joint physical custodian  
24 as he exercises visitation on 27% of the time on an irregular basis.

### 25 CONCLUSION

26 The status quo is that Mother is the primary physical custodian of this child and  
27 has had the child for 73% of the time for the past 9 months. She bears all the cost of  
28

1 transportation. Father pays no child support despite earning dramatically more than  
2 Mother. Mother has to transport the child to school in Yerington from Fallon each school  
3 day. The Court should enter an Order as follows:

4 A. Recognize the status quo and award Mother primary physical custody  
5 providing Father with defined visitation;

6 B. Enter an Order allowing Mother to enroll the child in the Churchill County  
7 Public Schools;

8 C. Address child support and require the parties to file current financial  
9 declarations with the Court.

10 D. Mother should be allowed to provide medical insurance coverage through her  
11 new husband's employer with Father being responsible for one half of the premium not  
12 covered by the employer.

13 DATED: August 28, 2018

Carucci and Associates  
702 Plumas Street  
Reno, Nevada 89509  
775-323-0400

14  
15  
16  
17 By: 

Roderic A. Carucci, Esq.  
Attorney for Amanda Hogan

**AFFIDAVIT OF AMANDA HOGAN IN SUPPORT OF**  
**MOTION TO MODIFY CUSTODY AND TO ENJOIN GARTH AMOS FROM**  
**REMOVING FROM THE JURISDICTION WITH THE MINOR CHILDREN**

STATE OF NEVADA     )  
                                  ss.  
COUNTY OF WASHOE    )

AMANDA HOGAN, being first duly sworn deposes and says:

1. That this Affidavit is based upon my personal knowledge and is made under the penalties of perjury.

2. Affiant is a party in the above captioned action.

3. This affidavit is filed in support of Affiant's motion to change custody of the minor child based upon a change in the status quo since entry of the last custodial order on October 26, 2015.

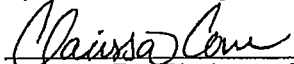
4. Affiant avers upon information and belief, that all the factual allegations contained in this Motion are true and correct.

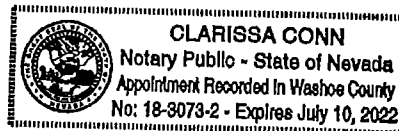
5. I have knowledge of and am competent to testify to the matters stated herein, except to those matters stated on information and belief, and as to those matters, I believe them to be true.

DATED: August 28, 2018

  
AMANDA HOGAN

SUBSCRIBED and SWORN to before  
me a Notary Public on August 28, 2018  
by Amanda Hogan.

  
Notary Public in and for said  
County and State



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Carucci & Associates and on August 28, 2018, I served a true and correct copy of:

**Motion to Modify Custody Based upon Status Quo**

by:

☒ Placing an original or true copy thereof in a sealed envelope, postage prepaid for collection and mailing in the United States Mail at Reno, Nevada

☐ Personal Delivery

☐ Facsimile to the following number: \_\_\_\_\_

☐ Reno Carson Messenger Service

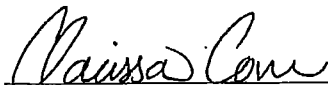
☐ Certified Mail, Return Receipt Requested

☐ E-Flex filing system

☐ Electronic mail addressed to:

addressed to:

Anthony Monahan  
14 Overland Lane  
Yerington, Nevada 89447

  
Clarissa Conn  
Carucci and Associates

FILED

2019 MAR 29 AM 10:45

TANYA SCERINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
KATHY THOMAS  
DEPUTY

Case No. 15-CV-00418

Dept. No. II

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

ANTHONY JACOB MONAHAN,

Plaintiff,

NOTICE OF APPEAL

Vs.

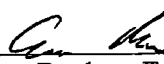
AMANDA KAITLYN HOGAN fka  
AMANDA KAITLYN KING,

Defendant.

Notice is hereby given that Anthony Jacob Monahan, Plaintiff in the above titled action, hereby appeals to the Supreme Court of Nevada, from final Order entered in this action on the 1<sup>st</sup> day of March 2019.

This document does not contain the Social Security Number of any person.

Dated this 29<sup>th</sup> day of March 2019.

  
\_\_\_\_\_  
Aaron Bushur, Esq.  
Bar No. 10862  
316 California Ave., #256  
Reno, Nevada 89509  
775-219-4222  
Attorney for Anthony Jacob Monahan

**CERTIFICATE OF SERVICE**

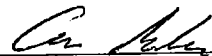
I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is AARON BUSHUR, ESQ, 316 California Ave., #256, Reno, Nevada 89509. On the 29 day of March 2019, I served the within document(s) through the U.S. Mail to:

LeAnne Schumann, Esq.  
22 State Route 208  
Yerington, Nevada 89447

Roderic A. Carucci, Esq.  
702 Plumas Street  
Reno, Nevada 89509

I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Executed on the 29<sup>th</sup> day of March 2019 in Sparks, Nevada.



Signature

Electronically Filed  
Apr 09 2019 04:37 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY JACOB MONAHAN,

Appellant,

CASE NO. 78489

v.

AMANDA KAITLYN HOGAN, fka  
AMANDA KAITLYN KING,,

Respondent.

**MOTION TO DISMISS APPEAL**

Roderic A. Carucci, Esq. (#4233)  
Kelly A. VandeBurgt, Esq. (#13270)  
Carucci and Associates  
702 Plumas Street  
Reno, Nevada 89509  
775-323-0400  
Fax 775-323-0466  
Email: rod@nvlitigators.com  
kelly@nvlitigators.com  
Counsel for Respondent

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**NOTICE OF MOTION**

Respondent, Amanda Hogan ("Mother"), the defendant below, moves this honorable Court to dismiss the appeal filed by Anthony Jacob Monahan ("Father"), the plaintiff below, on or about March 29, 2019, in the Third Judicial District Court in and for the County of Lyon, Hon. Leon Aburasturi, presiding. This motion is made and based upon NRAP 3A as the District Court has not yet entered a final order in this custodial matter. The Order entered and appealed from was an interim order that did not make a final determination of child custody, visitation or child support.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. Background**

The parties were never married. The parties have one minor child the issue of their relationship: Malakai Jaco Monahan, born July 18, 2012. Nevada is the home state and habitual residence of the minor child.

A temporary "Order After June 19, 2015 Hearing" awarded Amanda Hogan ("Mother") temporary primary physical custody because the Court had concerns that Anthony Monahan ("Father"): "had committed domestic violence", "may have an alcohol issue", and "may have a tendency towards violence." The next custodial order was entered on October 26, 2015, by stipulation at a Settlement Conference. That Order awarded the parties joint legal and joint physical custody conditioned upon Father completing 26 Anger Management classes and an Anger Management Evaluation. Father completed these conditions in December, 2015. Joint legal and joint physical custody was the order of the Court until the most recent custodial Order entered on March 1, 2019 (Exhibit 1 attached and incorporated herein by reference), after a hearing held on December 27, 2018. Despite a gross disparity in the incomes of the parties, child support has not been addressed

1 by the Court.

2 Based upon numerous changes in circumstance and the best interests  
3 of the minor child, Mother filed a "Motion to Modify Custody Based Upon  
4 Status Quo" on August 29, 2018. As stated above, an evidentiary hearing  
5 was held on December 27, 2018 and the Court entered its Order on March 1,  
6 2019, after briefing of post trial issues by counsel for the parties.

7 Mother's motion to modify custody was based upon numerous factors  
8 affecting the minor child's best interests:

9 1. Mother had been exercising de facto primary physical custody for  
10 more approximately one year based upon Father's numerous job changes and  
11 his employment by a mining company in Winnemucca, more than 150 miles  
12 from Yerington: where Father was supposed to be exercising custody and  
13 where the minor child attended school.

14 2. Mother had recently married Brandon Hogan, a pilot in the  
15 United States Navy, who is currently stationed in Fallon, Nevada, as a Top  
16 Gun flight instructor. Mother now resides in Fallon, Churchill County,  
17 Nevada, with her new husband. Mother's new husband has to be located  
18 near the Fallon Naval Air Station where he can be on call.

19 3. Mother maintained a log of Father's visitation time exercised  
20 since December, 2017, which was admitted into evidence. For the 9 months  
21 from December, 2017 through August, 2018, the date of Mother's motion,  
22 Father had the child for a total of 74 days, or 27% of the time as set forth  
23 below:

December, 2017	8 days
January, 2018	7 days
February, 2018	4 days
March, 2018	6 days
April, 2018	11 days
May, 2018	6 days
June, 2018	11 days
July, 2018	12 days
August, 2018	9 days

1 TOTAL

74 DAYS / 274 DAYS = 27%

2 4. Father resides with his girlfriend, Samantha Morrison. Mother  
3 had previously obtained two TPOs against Samantha Morrison based upon  
4 assaults and stalking in 2015 and 2016.

5 5. Despite Mother exercising de facto primary physical custody, the  
6 child continued to attend 1<sup>st</sup> grade in Yerington Elementary School. Mother  
7 estimates that it is about 65 miles each way to deliver Malakai to school each  
8 day; 130 miles round trip. This creates a time and monetary hardship for  
9 Mother as Father provides no support for his child. The hardship is  
10 exacerbated by the fact that Mother had the child 73% of the time.

11  
12 **A Final Order has Not Been Entered by the District Court**

13 Mother filed a motion to modify custody based upon the status quo as  
14 she had custody of the minor child for 73% of the time in the 9 months prior  
15 to filing her motion on August 29, 2018. As the parties resided 65 miles  
16 apart the relocation statutes were inapplicable as Mother's move to Fallon  
17 from Yerington was not "at such a distance that would substantially impair  
18 the ability of the other parent to maintain a meaningful relationship with the  
19 child." NRS 125C.0065. Mother was living in Fallon in 2018 and doing  
20 so during most of the period that she had the child for 73% of the time.  
21 Mother transported the child to school in Yerington every day and she  
22 maintained employment in Yerington until such time as she was able to gain  
23 approval from the Court recognizing her as the primary physical custodian  
24 and allowing her to enroll the child in the Churchill County School District.

25 Father opposed Mother's motion and belatedly raised a removal statute  
26 defense in one paragraph at page 8 of his opposition.

27 At the conclusion of the evidentiary hearing on December 27, 2018, the  
28

1 Court directed counsel for the parties to submit briefs on two issues: (1) the  
2 applicability of the removal statute as the parties live slightly over an hour  
3 apart (65 miles); and (2) argument regarding when a change in circumstance  
4 becomes applicable. The latter issue arose because Father claimed, for the  
5 first time on the witness stand at trial on December 27, 2018, that he had  
6 just changed jobs and accepted employment in Yerington. Father presented  
7 no documentation to support this untimely assertion. When queried under  
8 oath about the identity of this purported new employer, Husband provided  
9 the name of a company that, it turns out, does not even have a telephone or  
10 internet listing.

11 After the evidentiary hearing, the Court's March 1, 2019 Order  
12 disposed of the removal argument in two ways: (1) finding that the removal  
13 statute was inapplicable in this case given the proximity of the parties, and  
14 (2) in the alternative, finding that Mother met her statutory burden for  
15 removal with the child to Fallon, Nevada.

16 The Court also concluded as a matter of law that "Mother had de facto  
17 primary custody of the Child. The de facto custody agreement is in the best  
18 interests of the Child." [Exhibit 1 Order, page 5, line 1] "The Court also  
19 concludes that the Father was aware of the Mother's relocation and gave  
20 implied consent to the relocation, although not in writing." [Exhibit 1 Order,  
21 page 6, line 19].

22 Mother has not changed the child's enrollment; the child still attends  
23 school in Yerington (Lyon County) through the date of this writing.  
24 Throughout this proceeding the child has resided primarily with Mother  
25 during her custodial time and there was no evidence or testimony that  
26 Father's visitation was impeded in any way. It can reasonably be concluded  
27 based upon such conduct, that Father's visitation would similarly not be  
28 impeded if the child were enrolled in school in Churchill County. The child

1 already lives with Mother in Churchill County during her custodial time.,

2 "The Mother presented evidence that the reloca-  
3 tion situs will not substantially impair the ability of  
4 the Father to maintain a meaningful relationship with  
5 the Child based upon the de facto custody arrange-  
6 ment in place at the time of the relocation. Father  
7 can exercise visitation as the relocation situs is only  
8 one hour away from Yerington and three hours from  
9 Winnemucca. The Court can fashion a new schedule  
10 that provides for weekend and summer visitation."  
11 [Exhibit 1 Order, page 6, line 24]

12 "... the Court concludes that the relocation is in  
13 the best interests of the Child. The Father has been  
14 previously awarded joint custody and consented to the  
15 Mother exercising primary custody."  
16 [Exhibit 1 Order, page 7, line 15]

17 The Court proceeded to analyze the custodial factors set forth in NRS  
18 125C.0035 and concluded that the balancing of these factors weighed in favor  
19 of Mother continuing to exercise primary physical custody. The Court clearly  
20 recognized and ratified the status quo, contemplating an award of primary  
21 physical custody to Mother: "the Court can fashion a new schedule that  
22 provides for weekend and summer visitation" for Father.

23 However, the Court's Order *does not* specifically address physical  
24 custody of the child. The March 1, 2019, Order does not provide a specific  
25 visitation schedule as required by NRS 125.010. The Order does not address  
26 the incomes of the parties or address child support: even if the issue of child  
27 support were to be referred to a support Master, the Court must still make  
28 a determination as to which parent owes child support to the other and the  
percentage of gross income owed as payment for child support. None of this  
is included in the Court's Order *because the Court intended for the  
parties to conduct a further hearing prior to entering a final order.*

3. The Parties shall meet and confer regarding a  
visitation schedule. In the event no agreement can be  
reached, either party shall request a hearing. [Ex-  
hibit 1: Order page 9, line 16]

1 A hearing is calendared for April 17, 2019 on Mother's Order to Show  
2 Cause for Father's repeated failure and refusal to file a financial declaration  
3 as required by NRCP 16.295 and local rule, TJDCR 6(H). An email sent by  
4 the Judge's administrative assistant, to counsel for both parties on March 4,  
5 2019, (while attempting to set a date for a contempt hearing) stated the  
6 following:

7 "Regarding the primary physical custody: Judge  
8 requested a proposed primary visitation schedule and  
9 he has not received that at this point. We can address  
10 this issue as well at the Motion Hearing we are set-  
11 ting." [Exhibit 2 attached and incorporated herein by  
12 reference]

13 Based upon the above email which was sent after the Court's Order was  
14 entered, one must conclude that the District Court did not contemplate that  
15 the March 1, 2019, Order was a final order in this matter.

16 Under NRAP 3A(b)(1), an order is appealable as final  
17 when it "disposes of all the issues presented in the  
18 case, and leaves nothing for the future consideration  
19 of the court, except for post-judgment issues such as  
20 attorney's fees and costs." *Lee v. GNLV Corp.*, 116  
21 Nev. 424, 426, 996 P.2d 416, 417 (2000).  
22 *Wykoff Newberg Corp. v. State, Dep't of Transp.*, 413 P.3d 837 (Nev.  
23 2018)

24 Judge Aberasturi intentionally refrained from entering a final order  
25 regarding primary custody and visitation, presumably in the hope that any  
26 schedule fashioned by the parties might be preferable to one generated by  
27 the Court. The Order did allow Mother to enroll the child in the Churchill  
28 County Schools after the conclusion of the current school year: "The child  
shall finish the school year in his current school."

## 29 CONCLUSION

30 The Court has not entered a final order resolving Mother's motion to  
31 modify child custody. While the Court's dicta and conclusions of law clearly

1 evidence that Mother will be awarded primary custody of the party's child  
2 based upon the status quo, the Court intentionally refrained from incorporat-  
3 ing such a finding in its Order. The Court also refrained from entering a  
4 visitation schedule or findings regarding child support, with the intention  
5 that the parties would establish a mutually agreed upon visitation schedule  
6 or that the Court would enter one for them if they could not agree.

7 This is a frivolous appeal which should be dismissed for failure to  
8 comply with NRAP 3A, and sanctions should be awarded pursuant to NRAP  
9 38 and NRS 18.010(2)(b).

10  
11 **AFFIRMATION PURSUANT TO NRS 239B.030**

12 The undersigned hereby affirms this document does not contain a social  
13 security number pursuant to NRS 239B.030.

14 DATED: April 8, 2019

15 Carucci and Associates  
16 702 Plumas Street  
17 Reno, Nevada 89509  
18 775-323-0400

19 By: 

Roderic A. Carucci, Esq.  
Kelly A. VandeBurgt, Esq.  
Attorneys for Amanda Hogan

**ATTORNEY'S CERTIFICATE OF COMPLIANCE (NRAP 28.2)**

1. I hereby certify that this motion 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 this pleading has been prepared in a proportionally spaced typeface using MS Word in 14 point type and Century Schoolbook type style.

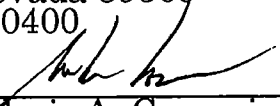
2. I further certify that this pleading complies with the page or type volume limitations of NRAP 27 because it is proportionately spaced, has a typeface of 14 points or more, contains 1936 words, and does not exceed 10 pages.

3. Finally, I hereby certify that I have read this appellate pleading, 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 motion complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, 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: April 8, 2019

Carucci and Associates  
702 Plumas Street  
Reno, Nevada 89509  
775-323-0400

By:

  
Roderic A. Carucci, Esq. (#4233)  
Counsel for Respondent  
Amanda Hogan

**CERTIFICATE OF SERVICE**

Pursuant to NRCp 5(b) and NRAP 25, I certify that I am an employee of Carucci and Associates and on April 8, 2019, I served a true and correct copy of:

**Motion to Dismiss Appeal**

by:

\_\_\_\_\_ Placing an original or true copy thereof in a sealed envelope, postage prepaid for collection and mailing in the United States Mail at Reno, Nevada

\_\_\_\_\_ Personal Delivery

\_\_\_\_\_ Facsimile to the following number: \_\_\_\_\_

\_\_\_\_\_ Reno Carson Messenger Service

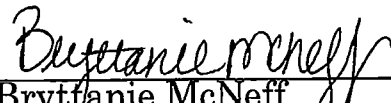
\_\_\_\_\_ Certified Mail, Return Receipt Requested

  X   E-Flex filing system

  X   Electronic mail addressed to: aaronbushurlaw@yahoo.com

addressed to:

Aaron Bushur, Esq.  
316 California Avenue, #256  
Reno, Nevada 89509

  
Bryttanie McNeff  
Carucci and Associates

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**EXHIBIT INDEX**  
**Monahan v. Hogan**

<b>Exhibit Number</b>	<b>Description</b>	<b>Number of Pages</b>
<b>1</b>	<b>Order</b>	<b>10</b>
<b>2</b>	<b>Email Re Hearing Dates</b>	<b>1</b>

# Exhibit 1

Exhibit 1

Case No.: 15-CV-00418

Dept. No.: II

FILED

2019 MAR -1 PM 1:15

TANYA SCERINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

ANDREA ANDERSEN

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\*\*\*

ANTHONY JACOB MONAHAN,

Plaintiff,

v.

AMANDA KAITLYN HOGAN fka,  
AMANDA KAITLYN KING,

Defendant.

ORDER

On October 26, 2015, the Court issued a Stipulation and Order Regarding Child Custody, Support and Visitation. On August 29, 2018, Defendant, hereinafter referred to as the "Mother," in the above matter filed a Motion to Modify Custody. The Court held a hearing on the Motion on December 27, 2018. Plaintiff, hereinafter referred to as the "Father," was represented by LEANN SCHUMANN ESQ. and Defendant was represented by RODRIC A. CARRUCCI ESQ. At the hearing the Court heard testimony and evidence from both sides, and ordered the attorneys to submit briefs on the issue of de facto change of custody. There is one (1) child subject to this action, MALAKAI MONAHAN (DOB: 07/18/2012) hereinafter referred to as the "Child."

FINDINGS OF FACT

Counsel addressed their concerns with the domestic violence issue. Court finds there was no domestic violence and there is no presumption under NRS 125C.0035.

1 The Parties altered the joint custody arrangement established in the October 26, 2015  
2 order. The Father began working out of Yerington. Most recently he was living and working in  
3 Winnemucca. His recent return to live and work in Yerington appears to the Court as a pretext  
4 to keep the Mother from gaining a court order that establishes primary custody in her favor. The  
5 Court did not find his testimony credible that he would continue to work in Yerington.

6 The Father's family provided care for the Child as the Father was out of town. The Child  
7 has strong ties to his paternal relatives. The Court was impressed by the amount of care and love  
8 provided by the paternal relatives.

9 Father was aware and did not object to the Mother relocating to Fallon until she filed the  
10 instant motion. Mother drove the Child to Yerington so he could attend school. She also was  
11 able to procure work in Yerington. Mother has now remarried and her new husband works at the  
12 Fallon Naval Air Station. His commitment requires that he live in a certain area because he is  
13 subject to being called out. He may relocate in several years.

#### 14 FINDINGS OF LAW

15 NRS 125C.0035 (4) states:

16 In determining the best interest of the child, the court shall consider and set forth  
17 its specific findings concerning, among other things:

18 (a) The wishes of the child if the child is of sufficient age and capacity to  
19 form an intelligent preference as to his or her physical custody.

20 (b) Any nomination of a guardian for the child by a parent.

21 (c) Which parent is more likely to allow the child to have frequent  
22 associations and a continuing relationship with the noncustodial parent.

23 (d) The level of conflict between the parents.

24 (e) The ability of the parents to cooperate to meet the needs of the child.

25 (f) The mental and physical health of the parents.

26 (g) The physical, developmental and emotional needs of the child.

27 (h) The nature of the relationship of the child with each parent.

28 (i) The ability of the child to maintain a relationship with any sibling.

(j) Any history of parental abuse or neglect of the child or a sibling of the  
child.

(k) Whether either parent or any other person seeking physical custody has  
engaged in an act of domestic violence against the child, a parent of the child or  
any other person residing with the child.

(l) Whether either parent or any other person seeking physical custody has  
committed any act of abduction against the child or any other child.

1 In *Potter v. Potter*, the Nevada Supreme Court held that a district court in determining  
2 whether relocation should be permitted may consider "whether one parent had de facto primary  
3 custody of the child prior to the motion." 121 Nev. 613, 618 (2005). The Court found no case  
4 law overruling this holding after the passage of NRS 125C.006, 125C.0065, 125C.007 and  
5 125C.0035.

6 The Court also found no case law regarding the necessity of any consent being in writing  
7 other than to avoid possible criminal consequences under NRS 200.359. The Court found no case  
8 law as to whether implied consent can exist under the analysis NRS 125C.006, 125C.0065, and  
9 125C.007 require.

10 NRS 125C.006 states:

11 1. If primary physical custody has been established pursuant to an order,  
12 judgment or decree of a court and the custodial parent intends to relocate his or  
13 her residence to a place outside of this State or to a place within this State that is  
14 at such a distance that would substantially impair the ability of the other parent to  
15 maintain a meaningful relationship with the child, and the custodial parent desires  
16 to take the child with him or her, the custodial parent shall, before relocating:

17 (a) Attempt to obtain the written consent of the noncustodial parent to  
18 relocate with the child; and

19 (b) If the noncustodial parent refuses to give that consent, petition the court  
20 for permission to relocate with the child.

21 2. The court may award reasonable attorney's fees and costs to the custodial  
22 parent if the court finds that the noncustodial parent refused to consent to the  
23 custodial parent's relocation with the child:

24 (a) Without having reasonable grounds for such refusal; or

25 (b) For the purpose of harassing the custodial parent.

26 3. A parent who relocates with a child pursuant to this section without the  
27 written consent of the noncustodial parent or the permission of the court is subject  
28 to the provisions of NRS 200.359.

NRS 125C.0065 states:

1. If joint physical custody has been established pursuant to an order,  
judgment or decree of a court and one parent intends to relocate his or her  
residence to a place outside of this State or to a place within this State that is at  
such a distance that would substantially impair the ability of the other parent to  
maintain a meaningful relationship with the child, and the relocating parent  
desires to take the child with him or her, the relocating parent shall, before  
relocating:

(a) Attempt to obtain the written consent of the non-relocating parent to  
relocate with the child; and

(b) If the non-relocating parent refuses to give that consent, petition the court  
for primary physical custody for the purpose of relocating.

2. The court may award reasonable attorney's fees and costs to the relocating parent if the court finds that the non-relocating parent refused to consent to the relocating parent's relocation with the child:

- (a) Without having reasonable grounds for such refusal; or
- (b) For the purpose of harassing the relocating parent.

3. A parent who relocates with a child pursuant to this section before the court enters an order granting the parent primary physical custody of the child and permission to relocate with the child is subject to the provisions of NRS 200.359.

NRS 125C.007 states:

1. In every instance of a petition for permission to relocate with a child that is filed pursuant to NRS 125C.006 or 125C.0065, the relocating parent must demonstrate to the court that:

- (a) There exists a sensible, good-faith reason for the move, and the move is not intended to deprive the non-relocating parent of his or her parenting time;
- (b) The best interests of the child are served by allowing the relocating parent to relocate with the child; and
- (c) The child and the relocating parent will benefit from an actual advantage as a result of the relocation.

2. If a relocating parent demonstrates to the court the provisions set forth in subsection 1, the court must then weigh the following factors and the impact of each on the child, the relocating parent and the non-relocating parent, including, without limitation, the extent to which the compelling interests of the child, the relocating parent and the non-relocating parent are accommodated:

- (a) The extent to which the relocation is likely to improve the quality of life for the child and the relocating parent;
- (b) Whether the motives of the relocating parent are honorable and not designed to frustrate or defeat any visitation rights accorded to the non-relocating parent;
- (c) Whether the relocating parent will comply with any substitute visitation orders issued by the court if permission to relocate is granted;
- (d) Whether the motives of the non-relocating parent are honorable in resisting the petition for permission to relocate or to what extent any opposition to the petition for permission to relocate is intended to secure a financial advantage in the form of ongoing support obligations or otherwise;
- (e) Whether there will be a realistic opportunity for the non-relocating parent to maintain a visitation schedule that will adequately foster and preserve the parental relationship between the child and the non-relocating parent if permission to relocate is granted; and
- (f) Any other factor necessary to assist the court in determining whether to grant permission to relocate.

3. A parent who desires to relocate with a child pursuant to NRS 125C.006 or 125C.0065 has the burden of proving that relocating with the child is in the best interest of the child.

#### Conclusions of Law

1. The Court concludes that the Mother had de facto primary custody of the Child. The de  
2. facto custody agreement is in the best interests of the Child. Pursuant to NRS 125C.0035, the  
3. Court concludes:

4. (a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent  
5. preference as to his or her physical custody.

6. The factor was not argued. However, the Child is not of a sufficient age based upon his  
7. birthdate.

8. (b) Any nomination of a guardian for the child by a parent.

9. Not applicable.

10. (c) Which parent is more likely to allow the child to have frequent associations and a continuing  
11. relationship with the noncustodial parent.

12. This factor favors the Mother as the Father had moved from Yerington to work and spent  
13. two thirds of his time in Winnemucca. The Mother continued to bring the Child to Yerington  
14. despite the fact that the Father was not present and was in Winnemucca.

15. (d) The level of conflict between the parents.

16. This factor does not favor either Party. Both do not care for each other. The Court  
17. cannot find that the conflict originates from one Party.

18. (e) The ability of the parents to cooperate to meet the needs of the child.

19. The Father tends to focus on his work and relies upon others to provide care for the  
20. Child. The Mother has difficulty cooperating with the other care givers. This factor favors  
21. neither Party.

22. (f) The mental and physical health of the parents.

23. Both parents seem to be emotionally immature, but neither showed any psychological or  
24. physical handicaps that would prevent them from parenting. This factor favors neither Party.

25. (g) The physical, developmental and emotional needs of the child.

1 This factor favors Mother as Father relies upon others to care for the Child.

2 (h) The nature of the relationship of the child with each parent.

3 The Child has a good relationship with both Parties. However, this factor favors Mother  
4 as the Father relies upon others to care for the Child.

5 (i) The ability of the child to maintain a relationship with any sibling.

6 This factor does not apply in the strict sense of the statute. If it were to apply to relatives  
7 and step-siblings, then it would favor the Father.

8 (j) Any history of parental abuse or neglect of the child or a sibling of the child.

9 Not applicable.  
10

11 (k) Whether either parent or any other person seeking physical custody has engaged in an act of  
12 domestic violence against the child, a parent of the child or any other person residing with the  
13 child.

14 Not applicable.

15 (l) Whether either parent or any other person seeking physical custody has committed any act of  
16 abduction against the child or any other child.

17 Not applicable.

18 The Court also concludes that the Father was aware of the Mother's relocation and gave  
19 implied consent to the relocation, although not in writing. The Father's real issues in this case  
20 are that the relocation interferes with his relatives' relationship with the Child and that in the  
21 future the Mother may wish to relocate out of state. The Parties did not litigate the school issue.

22 If NRS 125C.006 and 125C.0065 did apply, the Court concludes that the relocation  
23 complies with the applicable statutes. The Mother presented evidence that the relocation situs  
24 will not substantially impair the ability of the Father to maintain a meaningful relationship with  
25 the Child based upon the de facto custody arrangement in place at the time of the relocation.  
26 Father can exercise visitation as the relocation situs is only one hour away from Yerington and  
27

1 three hours from Winnemucca. The Court can fashion a new schedule that provides for weekend  
2 and summer visitation.

3 The Court appreciated the evidence that Father's counsel put on regarding the impact the  
4 relocation has on the paternal relatives. However, the statute only speaks to a relocation  
5 impacting a parent's relationship. A finding of an impact to a parent's relationship triggers the  
6 requirement to file for permission to relocate and for a court to engage in an analysis under  
7 125C.007. Without a finding of an impact to the parent, the Court does not enter into a best  
8 interests' analysis under 125C.007.

9 Furthermore, if the Court is in error as to the relocation analysis, the Mother has  
10 established she is in compliance with NRS 125C.007. She met her burden under both subsections  
11 (1) and (2).

12 Pursuant to subsection (a), the Court concludes that the Mother had a good faith basis.  
13 She has a new relationship. Her new husband works in Fallon. He provides income to maintain  
14 a stable relationship.

15 Pursuant to subsection (b), the Court concludes that the relocation is in the best interests  
16 of the Child. The Father had been previously awarded joint custody and consented to the Mother  
17 exercising primary custody. As between the Child's parents, the Mother has demonstrated that  
18 she cares for the Child the majority of the time. She tends to the Child's educational needs.  
19 Father has used relatives to care for the Child in lieu of performing them himself. Relocation  
20 provides her more time to spend with the Child and less time for the Child to be cared for by  
21 relatives or others.

22 The Court recognizes that this does not make the Father a bad person. The Court also  
23 recognizes that the Child benefits from having an active extended family. However, the  
24 applicable statutes and Nevada case law do not support denial of relocation on the basis that the  
25 extended family provides support for a child. There was absolutely no showing that the Mother  
26 is unfit.

1 Pursuant to subsection (c), the Court concludes that the Child and Mother will benefit.  
2 The Mother can either take classes or find work in Fallon. The Child will not have to commute  
3 two hours a day. The Child will have more time with his Mother while not being in a vehicle.

4 As to the factors in subsection (2) the Court concludes:

5 (a) The extent to which the relocation is likely to improve the quality of life for  
6 the child and the relocating parent;

7 As stated above, both the Mother and Child will spend less time in a vehicle. The City of  
8 Fallon offers the Mother working and educational opportunities. The Mother will have  
9 additional time to spend with her new husband.

10 The Child will have the same educational opportunities. The Mother will have more time  
11 to engage in extracurricular opportunities with the Child.

12 (b) Whether the motives of the relocating parent are honorable and not designed  
13 to frustrate or defeat any visitation rights accorded to the non-relocating parent;

14 As stated above, the Mother had honorable motives. Mother continued to bring the Child  
15 to the same school after relocating. Mother took no action to prevent the paternal relatives from  
16 seeing the Child. The Court found no evidence that the Mother sought to frustrate the Father  
17 from having a relationship with the Child.

18 (c) Whether the relocating parent will comply with any substitute visitation  
19 orders issued by the court if permission to relocate is granted;

20 The Court found no credible evidence that the Mother would refuse to follow any  
21 subsequent order this Court may issue to establish a visitation order.

22 (d) Whether the motives of the non-relocating parent are honorable in resisting  
23 the petition for permission to relocate or to what extent any opposition to the  
24 petition for permission to relocate is intended to secure a financial advantage in  
25 the form of ongoing support obligations or otherwise;

26 The Father's motives are honorable. His family clearly loves the Child deeply. The  
27 Court believes that the origins of any dispute arise from the fact that the relocation will impact  
28 the paternal relatives' relationship with the Child. The Father appears to the Court as fighting  
the relocation as he does not desire to see those relationships impacted.

(e) Whether there will be a realistic opportunity for the non-relocating parent to  
maintain a visitation schedule that will adequately foster and preserve the parental

1 relationship between the child and the non-relocating parent if permission to  
2 relocate is granted;

3 As state above, the Court concludes that it can create a visitation schedule that will  
4 adequately foster and preserve the parental relationship. The Court agrees with Father that the  
5 Court cannot create a visitation schedule that will preserve relationship the Child now maintains  
6 with the paternal relatives.

7 (f) Any other factor necessary to assist the court in determining whether to grant  
8 permission to relocate.

9 The Father invited the Court to speculate as to whether the Mother's relationship would  
10 last long and whether the Mother was seeking to establish an advantage should she seek to  
11 relocate out of state in the future if her new husband was relocated. The Court did not accept the  
12 invitation.

13 Based upon the above and good cause appearing, the Court hereby **ADJUDGES** and  
14 **ORDERS** as follows:

- 15 1. The Mother was not required to seek permission to relocate pursuant to either  
16 NRS 125C.006 or 125C.0065.
- 17 2. The Mother has met her burden of proof under NRS 125C.007 to relocate.
- 18 3. The Parties shall meet and confer regarding a visitation schedule. In the event no  
19 agreement can be reached, either party shall request a hearing.
- 20 4. The Child shall finish the school year in his current school.

21 DATED: This 28<sup>th</sup> day of February, 2019.

22   
23 Hon. LEON ABERASTURI  
24 DISTRICT JUDGE  
25  
26  
27  
28

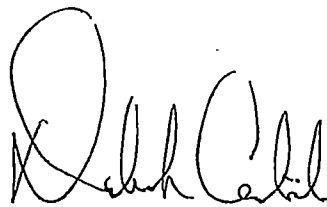
Certificate of Mailing

I hereby certify that I, Deborah Carlisle, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerlington, Nevada addressed to:

Johnston Law Offices, P.C.  
LeAnn Schumann, Esq.  
*Deposited in the TJDC mailbox*

Roderic A. Carucci, Esq.  
Carucci and Associates  
702 Plumas Street  
Reno, NV 89509

DATED: This 1<sup>st</sup> day of March, 2019.



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# Exhibit 2

Exhibit 2

4/9/2019

Carucci & Associates Mail - 15-CV-00418 Monahan v Hogan/King

**CARUCCI  
& ASSOCIATES**  
ATTORNEYS AT LAW

Rod Carucci <rod@nvlitigators.com>

---

**15-CV-00418 Monahan v Hogan/King**

---

Debbie Gilmore <dgilmore@lyon-county.org>

Mon, Mar 4, 2019 at 3:22 PM

To: Rod Carucci <rod@nvlitigators.com>, LeAnn Schumann <lschumann@johnstonlawoffices.co>

Mr. Carucci:

Regarding the primary physical custody: Judge requested a proposed primary visitation schedule and he has not received that at this point. We can address this issue as well at the Motion Hearing we are setting.

Mr. Carucci is unavailable for any of the previous dates suggested so here are some other options:

April 17  
April 18  
April 26 @ 10:30 AM  
May 7 @ 1:30 PM  
May 15  
May 17  
May 30 @ 1:30 PM  
June 6  
June 7

Thank you,  
Debbie

[Quoted text hidden]

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[Quoted text hidden]

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY JACOB MONAHAN,  
Appellant,

vs.

AMANDA KAITLYN HOGAN, F/K/A  
AMANDA KAITLYN KING,  
Respondent.

No. 78489

**FILED**

SEP 04 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

**ORDER DISMISSING APPEAL**

This is an appeal from a March 1, 2019, district court order regarding child custody. Third Judicial District Court, Lyon County; Leon Aberasturi, Judge.

Respondent has filed a motion to dismiss this appeal for lack of jurisdiction. Respondent appears to contend that the challenged order is not appealable as a final judgment under NRAP 3A(b)(1) because it does not specify a visitation schedule or set an amount of child support. Appellant admits that the challenged order does not fully resolve all issues presented but counters that it is a final order because no additional hearings have been scheduled and the district court filed a notice of entry of order regarding the order.

It appears that the district court entered a final judgment in this matter on October 26, 2015. There can be only one final judgment in an action. *See Alper v. Posin*, 77 Nev. 328, 331, 363 P.2d 502, 503 (1961), *overruled on other grounds by Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.2d 416 (2000). Thus, the March 1, 2019, order is not appealable as a final judgment.

NRAP 3A(b)(7) allows an appeal from an order not arising "in a juvenile court that *finally* establishes or alters the custody of minor

children" (emphasis added). Here, the district court's order arguably altered the joint custody arrangement established in the October 26, 2015, order by recognizing that respondent has de facto primary custody of the minor child. But as noted by appellant, the order does not determine visitation. Instead, the order directs the parties to "meet and confer regarding a visitation schedule. In the event no agreement can be reached, either party shall request a hearing." Accordingly, the order does not appear appealable under NRAP 3A(b)(7) because it does not resolve the custody issue with finality. See NRS 125A.045(1) (visitation is a custody determination). As no other statute or court rule appears to authorize this appeal, see *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P.3d 850, 851 (2013) (this court "may only consider appeals authorized by statute or court rule"), the motion to dismiss is granted, and this appeal is dismissed. This dismissal is without prejudice to appellant's right to file a timely notice of appeal from any district court order that finally establishes or alters custody and visitation. Respondent's request for attorney fees or other sanctions is denied.

It is so ORDERED.

Hardesty, J.  
Hardesty

Stiglich, J.  
Stiglich

Silver, J.  
Silver

cc: Hon. Leon Aberasturi, District Judge  
Shawn B. Meador, Settlement Judge  
Aaron M. Bushur  
Carucci & Associates  
Third District Court Clerk

1 CASE NO.: 15-CV-00418

2 DEPT. NO: 2

3 The undersigned hereby affirms this document  
4 does not contain a social security number.

FILED

2020 JUN -9 AM 11:27

TANYA SOLENT  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
ANDREA ANDERSEN

5  
6  
7  
8 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF LYON

10  
11 ANTHONY JACOB MONAHAN,

12 Plaintiff,

MOTION TO RELOCATE

13 vs.

14 AMANDA KAITLYN HOGAN fka  
15 AMANDA KAITLYN KING,

16 Defendant.

17 Amanda Hogan ("Mother"), by and through counsel, Roderic A. Carucci, Esq. and  
18 the law firm of Carucci and Associates, moves the Court for permission to relocate to the  
19 State of Virginia based upon military orders received by her Husband, Brandon Hogan.  
20 This motion is made and based upon all the pleadings and papers on file herein, the  
21 following memorandum of points and authorities, and the attached supporting affidavit  
22 of Amanda Hogan.

23 DATED: June 8, 2020

24 Carucci and Associates  
25 702 Plumas Street  
26 Reno, Nevada 89509  
27 775-323-0400

28 By: 

Roderic A. Carucci, Esq.  
Attorney for Amanda Hogan

**MEMORANDUM OF POINTS AND AUTHORITIES**

The parties were never married. The parties have one minor child the issue of their relationship: Malakai Jaco Monahan, born July 18, 2012, presently almost 8 years of age. Nevada is the home state and habitual residence of the minor child.

The last custodial order of this Court was entered on November 20, 2019. The parties share joint legal custody of Malakai. Amanda Hogan ("Mother") has primary physical custody. The present visitation arrangement is that Anthony Jacob Monahan ("Father") has visitation 10 continuous days each month beginning on the first Friday of each month at approximately 5:00 pm and ending on the second Monday morning thereafter, when school commences, or at approximately 5:00 pm, if school is not in session. The parties alternate holidays.

Mother has been married to Brandon Hogan since August 28, 2018. Brandon is a Lieutenant with the United States Navy on active duty presently serving as a flight instructor at the Fallon Naval Air Station. Brandon flies F18s. Mother and Brandon reside in a home they own in Fallon, Nevada. They have a new infant boy, Riley, who was born on November 13, 2019.

Father, Jacob Monahan, lives in Yerington, Nevada, in a trailer with his new wife, Samantha. Jacob and Samantha are believed to have a new child as well.

At the time of the last court appearance it was represented to the Court that Brandon Hogan expected to receive a permanent change of station from the Navy in mid to late 2020. Brandon has now received orders reassigning him to Oceana Naval Station in Virginia Beach, Virginia, starting November, 2020. He and Amanda are required to leave Fallon on or about November 1, 2020. A copy of Brandon's military orders are attached hereto as Exhibit 1.

Mother seeks permission to relocate with the minor child to Virginia.

NRS 125C.006 provides in relevant part:

1. If primary physical custody has been established pursuant to an order, judgment or decree of a court and the custodial parent intends to relocate his or her residence to a

1 place outside of this State or to a place within this State that is  
2 at such a distance that would substantially impair the ability  
3 of the other parent to maintain a meaningful relationship with  
the child, and the custodial parent desires to take the child  
with him or her, the custodial parent shall, before relocating:

4 (a) Attempt to obtain the written consent of the  
noncustodial parent to relocate with the child; and

5 (b) If the noncustodial parent refuses to give that  
6 consent, petition the court for permission to relocate with the  
child.

7 2. The court may award reasonable attorney's fees and costs to  
8 the custodial parent if the court finds that the noncustodial  
9 parent refused to consent to the custodial parent's relocation  
with the child:

10 (a) Without having reasonable grounds for such  
refusal; or

11 (b) For the purpose of harassing the custodial parent.

12 Mother has communicated her plans to Father and has requested his consent.  
13 Father has unreasonably refused (Exhibit 2) asserting that it is in the child's best interest  
14 to remain in Yerington with him. Father seems not to understand the legal standard  
15 when primary custody has already been established. As Father does not have reasonable  
16 grounds for his refusal, it is appropriate that the Court award Mother her costs and  
17 attorney's fees associated with this motion.

18 As primary physical has previously been established and Mother is the primary  
19 physical custodian, the legal requirement to grant Mother's motion to relocate to are set  
20 forth in NRS 125C.070, the relevant portions of which are set forth below:

21 1. In every instance of a petition for permission to relocate  
22 with a child that is filed pursuant to NRS 125C.006 or 125C.-  
0065, the relocating parent must demonstrate to the court that:

23 (a) There exists a sensible, good-faith reason for the  
24 move, and the move is not intended to deprive the non-relo-  
cating parent of his or her parenting time;

25 (b) The best interests of the child are served by  
26 allowing the relocating parent to relocate with the child; and

27 (c) The child and the relocating parent will benefit  
28 from an actual advantage as a result of the relocation.

1 2. If a relocating parent demonstrates to the court the  
2 provisions set forth in subsection 1, the court must then weigh  
3 the following factors and the impact of each on the child, the  
4 relocating parent and the non-relocating parent, including,  
5 without limitation, the extent to which the compelling interests  
6 of the child, the relocating parent and the non-relocating parent  
7 are accommodated:

8 (a) The extent to which the relocation is likely to  
9 improve the quality of life for the child and the relocating  
10 parent;

11 (b) Whether the motives of the relocating parent are  
12 honorable and not designed to frustrate or defeat any visitation  
13 rights accorded to the non-relocating parent;

14 (c) Whether the relocating parent will comply with  
15 any substitute visitation orders issued by the court if permis-  
16 sion to relocate is granted;

17 (d) Whether the motives of the non-relocating parent  
18 are honorable in resisting the petition for permission to relocate  
19 or to what extent any opposition to the petition for permission  
20 to relocate is intended to secure a financial advantage in the  
21 form of ongoing support obligations or otherwise;

22 (e) Whether there will be a realistic opportunity for  
23 the non-relocating parent to maintain a visitation schedule that  
24 will adequately foster and preserve the parental relationship  
25 between the child and the non-relocating parent if permission  
26 to relocate is granted; and

27 (f) Any other factor necessary to assist the court in  
28 determining whether to grant permission to relocate.

3. A parent who desires to relocate with a child pursuant to  
NRS 125C.006 or 125C.0065 has the burden of proving that  
relocating with the child is in the best interest of the child.

21 There is a sensible, good faith reason for the relocation. Mother's husband,  
22 Brandon, is a career Naval Officer with 20 years of service. He is the primary breadwin-  
23 ner in the family who has received orders relocating him to Oceana Naval Air Station in  
24 Virginia Beach, Virginia. This is a career move that was anticipated. Brandon anticipates  
25 a promotion to lieutenant commander in the not too distant future. Clearly, there is a  
26 good faith reason for the move, and the expectation that this would occur was expressed  
27 to the Court at the last custodial hearing.

28 The move is anticipated to improve the quality of Malakai's life because his parents

1 are upwardly mobile in the Naval hierarchy. They will obtain housing in the Virginia  
2 Beach area at least equivalent to that which they presently have in Fallon. Malakai will  
3 be entering third grade in the fall. Mother has obtained information comparing schools  
4 in Lyon County, Nevada (where Father resides) with those in the Virginia Beach, Virginia  
5 area (Exhibit 3). According to these available internet sources Yerington Elementary  
6 School, based upon state test scores, show 42% of students are at least proficient in math  
7 and 37% in reading. Virginia Beach public schools, based upon state test scores, show 76%  
8 of students are at least proficient in math and 86% in reading. This is a huge differential:  
9 34% difference in math and 49% difference in reading.

10 This is a career move for Brandon over which he has no choice. The relocation is  
11 not for purposes of frustrating Father's visitation and contact with Malakai.

12 Mother has always complied with all orders of this Court. She has attended all  
13 required Court hearings. There is no reason to believe that she would not comply with  
14 an alternate visitation schedule.

15 Father, throughout the extended litigation of this custodial case has been  
16 recalcitrant and resistant. He has previously misrepresented his place of residence and  
17 employment status to this Court. Father is expected to oppose any request Mother makes  
18 to this Court as the level of conflict between the parties has always been high. The parties  
19 communicate through Talking Parents and have minimal to no interpersonal communi-  
20 cation.

21 An alternative visitation schedule can be structured with unaccompanied minor air  
22 service for Malakai, as he will be 8 years of age in July, 2020. An alternative visitation  
23 schedule is envisioned to include a major portion of the summer break from school, part  
24 of the Christmas break, and Spring break. The parties should share the cost of travel, but  
25 the parent who is receiving the child for visitation / custody must prepurchase the ticket  
26 at least 30 days in advance and provide the itinerary promptly to the other party upon  
27 purchase.  
28

CONCLUSION

Mother is required to relocated to Virginia with her husband, a career naval aviator. This move was anticipated. There is a sensible, good faith reason for the move. This move is in the best interest of the child and means exists to provide for an alternative visitation schedule. Father's objections are not meritorious and are mere pretext to continue Father's ongoing strategy to vex and frustrate Mother.

DATED: June 8, 2020

Carucci and Associates  
702 Plumas Street  
Reno, Nevada 89509  
775-323-0400

By: 

Roderic A. Carucci, Esq.  
Attorney for Amanda Hogan

AFFIDAVIT OF AMANDA HOGAN IN SUPPORT OF

MOTION TO RELOCATE

STATE OF NEVADA     )  
                                  ss.  
COUNTY OF WASHOE    )

AMANDA HOGAN, being first duly sworn deposes and says:

1. That this Affidavit is based upon my personal knowledge and is made under the penalties of perjury.

2. Affiant is a party in the above captioned action.

3. This affidavit is filed in support of Affiant's motion to relocate to Virginia with the minor child.

4. The exhibits attached hereto, are true and correct copies of originals.

5. Brandon Hogan has received military orders for permanent change of station to Virginia Beach, Virginia.

6. Affiant must leave the State of Nevada on or before November 1, 2020.

7. Affiant avers upon information and belief, that all the factual allegations contained in this Motion are true and correct.

8. I have knowledge of and am competent to testify to the matters stated herein, except to those matters stated on information and belief, and as to those matters, I believe them to be true.

DATED: June 8, 2020

Amanda Hogan  
AMANDA HOGAN

SUBSCRIBED and SWORN to before  
me a Notary Public on June 8, 2020  
by Amanda Hogan.

Bryttanie McNEFF  
Notary Public in and for said  
County and State



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Carucci & Associates and on June 8, 2020, I served a true and correct copy of:

**Motion to Relocate**

by:

☒ Placing an original or true copy thereof in a sealed envelope, postage prepaid for collection and mailing in the United States Mail at Reno, Nevada

☐ Personal Delivery

☐ Facsimile to the following number: \_\_\_\_\_

☐ Reno Carson Messenger Service

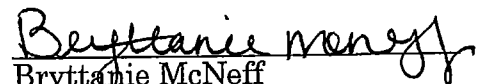
☐ Certified Mail, Return Receipt Requested

☐ E-Flex filing system

☐ Electronic mail addressed to:

addressed to:

Aaron Bushur, Esq.  
316 California Avenue #256  
Reno, Nevada 89509

  
Bryttanie McNeff  
Carucci and Associates

# Exhibit 1

Exhibit 1

ROUTINE

ZYUW RUCJ A0000 1530001

R 010001Z JUN 20

FM COMNAVPERSCOM MILLINGTON TN//PERS432G //

TO NAVAVNWARDEVCCEN FALLON NV//JJJ//

; COMCARAIRWING SEVEN//JJJ//

TACTRAGRULANT DAM NECK VA//JJJ//

COMNAVPERSCOM MILLINGTON TN//JJJ//

PERSUPP DET OCEANA VA//JJJ//

PERSUPP DET LEMOORE CA//JJJ//

UNCLAS //N01321//

MSGID/GENADMIN/CHNAVPERSCOM//

SUBJ/BUPERS ORDER//

RMKS/

BUPERS ORDER: [REDACTED] (PERS-432G)

OFFICIAL CHANGE DUTY ORDERS FOR

LT BRANDON MICHAEL HOGAN, USN

XX

IN CARRYING OUT/PROCESSING THESE ORDERS, BOTH PARTS ONE AND TWO  
MUST BE READ AND LISTED INSTRUCTIONS COMPLIED WITH.

FOR OFFICIAL USE ONLY

XX

# P A R T O N E

----- DETACHING ACTIVITY (M) -----

WHEN DIRECTED BY REPORTING SENIOR, DETACH IN NOV 20 EDD: NOV 20

FROM NAVAL AVIA WARFIGHTING DEV CNT UIC: 63407

PERMANENT DUTY STATION NV, FALLON

FROM DUTY IN A FLYING STATUS INVOLVING FLYING ACC: 100

- PERSONNEL ACCOUNTING SUPPORT: PERSUPPDET LEMOORE

UIC: 43077

- FOR AN ENHANCED PCS MOVE EXPERIENCE PLEASE BE SURE TO UTILIZE MYPCS

RA0062

MOBILE AVAILABLE AT F PS://NP2/NMCI.NAVY/MIL TO REATE A UNIQUE PCS  
CHECKLIST TAILORED FOR THE NEEDS OF YOUR UPCOMING MOVE, VIEW LEAN  
ORDERS AND INITIATE YOUR TRAVEL VOUCHER AND SUBMIT TO YOUR CPPA.

----- INTERMEDIATE (01) ACTIVITY (M) -----

REPORT IN DEC 20

EDA: 03 DEC 20

TO COM CVW 7

UIC: 09736

LOCATION: VA, VIRGINIA BCH OCE

FOR TEMPORARY DUTY IN A FLYING STATUS INVOLVING

ACC: 350

FLYING

FOR APPROXIMATELY 4 DAY(S)

- PERSONNEL ACCOUNTING SUPPORT: PERSUPPDET OCEANA

UIC: 68550

UPON COMPLETION OF TEMPORARY DUTY IN A FLYING STATUS INVOLVING

FLYING

AND WHEN DIRECTED, DETACH.

EDD: 06 DEC 20

----- INTERMEDIATE (02) ACTIVITY (M) -----

REPORT NET 05 DEC 20 BUT NLT 07 DEC 20

EDA: 07 DEC 20

TO STU TACTRAGRULANT

UIC: 43577

LOCATION: VA, VIRGINIA BEACH

FOR TEMPORARY DUTY UNDER INSTRUCTION IN A FLYING

ACC: 341

STATUS INVOLVING FLYING

FOR APPROXIMATELY 12 DAY(S)

- PERSONNEL ACCOUNTING SUPPORT: PERSUPPDET OCEANA

UIC: 68550

TO INCLUDE 12 DAY(S) AT JMTC

CLASS:  CONV: 201207 GRAD: 201218

CDP: 0930

UPON COMPLETION OF TEMPORARY DUTY UNDER INSTRUCTION IN A FLYING

STATUS INVOLVING FLYING

AND WHEN DIRECTED, DETACH.

EDD: 18 DEC 20

- REPORT NOT LATER THAN 0730 07 DEC 20 AND NOT EARLIER THAN

05 DEC 20 . REPORTING PRIOR TO NOT EARLIER THAN DATE WILL

RA0063

TERMINATE LEAVE STATUS AND RESULTS IN NON-PAYMENT OF PER DIEM FOR PERIOD PRIOR TO THE NOT EARLIER THAN DATE SPECIFIED UNLESS AUTHORIZED UNDER MILPERSMAN 1320-140.

- MEMBER ADVISED: NO PERDIEM/LODGING REIMBURSEMENT AUTHORIZED AT ANY INTERMEDIATE STOP(S) IN THE SAME GEOGRAPHIC LOCATION AS THE ULTIMATE DUTY STATION. EXCEPTION TO THIS POLICY IS ARDUOUS SEA DUTY IDENTIFIED IN JTR U5120D AND LISTED IN OPNAVINST 4650.17.

- MEMBER DIRECTED: FOR EACH INTERMEDIATE STOP, IF GOVERNMENT QUARTERS ARE AVAILABLE (BQ/SHIPBOARD BERTHING) AND THE BASE HAS A GOVERNMENT MESS APPROPRIATED FUND FOOD SERVICE ACTIVITY/GALLEY AVAILABLE TO THE TRAVELER, USE OF THE GOVERNMENT MEAL PER DIEM RATE IS DIRECTED. IF GOVERNMENT MESSING IS NOT AVAILABLE OR IS PARTIALLY AVAILABLE, OBTAIN AN ENDORSEMENT TO THAT EFFECT FROM THE HOST COMMAND. JTR PARA U4400 APPLIES.

----- ULTIMATE ACTIVITY (M) -----

- YOU ARE ELIGIBLE FOR USE OF YOUR GOVERNMENT TRAVEL CARD (GTCC) DURING YOUR UPCOMING PCS MOVE. REFER TO NAVADMIN 297/19 FOR GTCC PCS USE ELIGIBILITY CRITERIA.

REPORT NOT LATER THAN DEC 20

EDA: DEC 20

TO COM CVW 7

UIC: 09736

HOMEPORT

VA, VIRGINIA BCH OCE

FOR DUTY IN A FLYING STATUS INVOLVING FLYING

ACC: 100

BSC: 10315

PRD: 2212

- PERSONNEL ACCOUNTING SUPPORT: PERSUPPDET OCEANA

UIC: 68550

- WELCOME TO THE STAFF OF CARRIER AIR WING SEVEN (CVW-7) "FREEDOM FIGHTERS" STATIONED AT NAS OCEANA, VIRGINIA BEACH, VA. FOR ADDITIONAL INFORMATION ON THE COMMAND, NAS OCEANA AND DRIVING DIRECTIONS PLEASE VISIT OUR WEBSITE AT: [HTTP://WWW.PUBLIC.NAVY.MIL/AIRFOR/CVW7](http://www.public.navy.mil/AIRFOR/CVW7). TO EXPEDITE YOUR SPONSOR ASSIGNMENT AND TO ASSIST YOU WITH YOUR PCS

RA0064

# Exhibit 2

Exhibit 2

AH

Amanda Hogan

5/21/2020 1:49 PM

I'm notifying you that we have received our next assignment and will be moving to Virginia in November. I'm asking for your written consent to move out of state with Malakai at that time.

We would absolutely prefer to work out a fair visitation schedule outside of the court system, but are prepared to do that if we have to.

We have involved Malakai in this process the entire time, he knows all about it. He also knows that he will still maintain his relationship with you to include visits, video calls, and phone calls.

Let us know which way you want to move forward, thanks.

Anthony Jacob monahan viewed this subject 5/21/2020 2:10 PM

AM

Anthony Jacob monahan

5/22/2020 1:11 AM

I'll be there this morning at 9am to pick Malakai up for the day. We'd like to express how greatly appreciated this "extra" time with him is. Also, is there anyway we would be able to hold on to him until 8pm this evening instead of 6?

Thank you for bringing this news to our attention. Obviously we don't want Malakai to be far away from us, we would like to have a conversation about this soon.

RA0066

AH

**Amanda Hogan**

5/28/2020 1:23 PM

Good Evening,

We understand that the visitation details will require time, however a simple consent to move or denial of our request will tell us what comes next. We would prefer to work out a schedule outside of court with your consent as we said before, but either way this process needs to start.

If we have your consent, great, we'll work out a schedule. If you plan to say no, we ask that you just do so.

Anthony Jacob monahan viewed this subject 5/28/2020 1:31 PM

AM

**Anthony Jacob monahan**

5/30/2020 1:11 AM

Good morning. We are wanting to talk about all options available for Malakai. As that would be in his best interest - is to have parents trying to resolve the situation outside of a court room. We would like to discuss Malakai staying here for reasons that would be in Kais best interest; Malakai has been in Nevada his entire life. Along side with the majority of his family from not only this side but your grandparents, sister, and Kais cousins are here in Yerington along with all of mine and Samantha's family. My work schedule has been very lenient to accommodate Malakais schedules where I was able to take him to school, pick him up and stay home with him during our custodial time. Along with me being able to visit him during the non custodial time 2 to 3 times a week either helping with his tutoring or playing with him on recess. We are extremely involved in Kais school and extra curricular Activities that he's been accustomed to us being a part of it.

Amanda Hogan viewed this subject 5/30/2020 2:04 AM

RA0067

AH Amanda Hogan

5/31/2020 4:11 AM

Thank you letting me know your answer is no.

Anthony Jacob monahan viewed this subject. 5/31/2020 4:21 AM

AM Anthony Jacob monahan

5/31/2020 4:23 AM

Are you at least willing to discuss this to see if we can find some common ground for malakai's best interests alone?

Amanda Hogan viewed this subject. 5/31/2020 4:27 AM

AH Amanda Hogan

5/31/2020 4:38 AM

I disagree with you that living in Yerington is in Malakai's best interest. So there is no common ground possible based on your desire to have him live in Yerington full time.

Anthony Jacob monahan viewed this subject. 6/1/2020 9:01 AM

AM Anthony Jacob monahan

6/2/2020 10:03 AM

We would like to talk to kai tonight please if and when he's available, anytime after 5 at your convenience. Thank you. I understand we have differences, but there are a lot of factors to consider besides our different beliefs.

# Exhibit 3

Exhibit 3

6/8/2020

Carucci & Associates Mail - Amanda Hogan school ratings

**CARUCCI  
& ASSOCIATES**  
ATTORNEYS AT LAW

Rod Carucci <rod@nvlitigators.com>

---

## Amanda Hogan school ratings

---

Amanda K <amandaking541@gmail.com>  
To: Rod Carucci <rod@nvlitigators.com>

Mon, Jun 8, 2020 at 9:25 AM

Verizon LTE

8:19 AM




niche.com

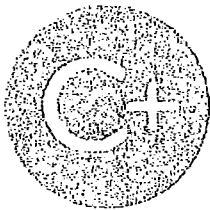
---

Lyon County School District

# Yerington Elementary School

 Overall Grade • Public • PK, K-4 • Yerington, NV  
• Add Your Review

How are grades calculated?



## Overall Niche Grade

C+ Academics

A Diversity

C+ Teachers

Yerington Elementary School is a public school

RA0070

6/8/2020

Carucci & Associates Mail - Amanda Hogan s ratings

located in Yerington, NV. It has 537 students in grades PK, K-4 with a student-teacher ratio of 17 to 1. According to state test scores, 42% of students are at least proficient in math and 37% in reading.

## Compare Yerington Elementary School to Other Schools

Verizon LTE

8:19 AM

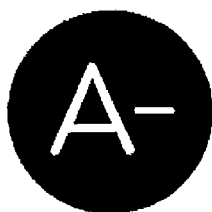


niche.com

## Virginia Beach City Public Schools

#2 in Best School Districts in Norfolk Area

Virginia Beach, VA • ★★★★★ 208 reviews



How are grades calculated?

Overall Niche Grade

B+

Academics

A

Diversity

RA0071

**A-** Teachers**A-** College Prep**A** Clubs & Activities **B** Health & Safety[View Full Report Card](#) ▼

Virginia Beach City Public Schools is a highly rated, public school district located in Virginia Beach, VA. It has 68,986 students in grades PK, K-12 with a student-teacher ratio of 17 to 1. According to state test scores, 76% of students are at least proficient in math and 86% in reading.

1 Case No. 20-CV-00818

2 Dept. No. II

3 Pursuant to NRS 239B.030, the  
4 undersigned certifies no Social  
5 Security numbers are contained  
6 in this document.

7 **IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
8 **IN AND FOR THE COUNTY OF LYON**

9 ANTHONY JACOB MONAHAN,

10 Plaintiff,

11 vs.

12 AMANDA KAITLYN HOGAN fka

13 AMANDA KAITLYN KING,


14 Defendant.

**NOTICE OF APPEAL**

15  
16  
17 Notice is hereby given that Plaintiff Anthony Jacob Monahan appeal to the Nevada Supreme  
18 Court from the Order after September 15, 2020 Hearing; Order Granting Motion to Relocate with Minor  
19 Child entered on October 5, 2020, a copy of which is attached as Exhibit 1. Plaintiffs also appeal from all  
20 other interlocutory orders and rulings made final and appealable for the foregoing.

21 DATED this 28<sup>th</sup> day of October, 2020.

22 THE LAW FIRM OF LAUB & LAUB

23   
24 \_\_\_\_\_  
25 Nicholas C. Palmer, Esq.  
26 Nevada State Bar #9888  
27 630 E. Plumb Lane  
28 Reno, Nevada 89502

1  
2  
3 CERTIFICATE OF SERVICE

4 Pursuant to NRCP 5(b), I certify that I am an employee of the LAW FIRM OF LAUB &  
5 LAUB, and that on this 28<sup>th</sup> day of October 2020, I caused to be delivered via U.S. Mail, a true  
6 and correct copy of the within document: Notice of Appeal, Case # 15-CV-00418, addressed as  
7 follows:

8 Roderic A. Carucci, Esq.  
9 702 Plumas Street  
10 Reno, Nevada 89502

11  
12 M. Moreno  
13 MARIA MORENO  
14  
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<u>Exhibit</u>	<u>Name</u>	<u>Length</u>
Exhibit 1	Notice of Entry of Judgment	17 Pages

1 CASE NO.: 15-CV-00418

2 DEPT. NO.: II

3 The undersigned hereby affirms this document  
4 does not contain a social security number.

5  
6  
7  
8 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF LYON

10  
11 ANTHONY JACOB MONAHAN,

12 Plaintiff,

13 vs.

14 AMANDA KAITLYN HOGAN fka  
15 AMANDA KAITLYN KING,

16 Defendant.

NOTICE OF ENTRY OF ORDER

17 To: Defendant, Anthony Monohan and his attorney of record Aaron Bushur, Esq.:

18 Please take notice that on October 5, 2020, this Honorable Court entered its "Order  
19 After September 15 Hearing; Order Granting Motion to Relocate with Minor Child" in the  
20 above captioned matter. A copy of the order is attached hereto as Exhibit 1.

21 DATED: October 7, 2020

22 Carucci and Associates  
23 702 Plumas Street  
24 Reno, Nevada 89509  
25 (775) 323-0400

26 By:

*Kelly VandeBurg*  
27 Roderic A. Carucci, Esq.  
28 Kelly A. VandeBurg, Esq.  
Attorneys for Amanda Hogan

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Carucci & Associates and on October 7, 2020, I served a true and correct copy of:

**Notice of Entry of Order**

by:

☐ Placing an original or true copy thereof in a sealed envelope, postage prepaid for collection and mailing in the United States Mail at Reno, Nevada

☐ Personal Delivery

☐ Facsimile to the following number: \_\_\_\_\_

☒ Reno Carson Messenger Service

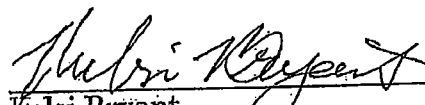
☐ Certified Mail, Return Receipt Requested

☐ E-Flex filing system

☐ Electronic mail addressed to:

addressed to:

Aaron Bushur, Esq.  
316 California Avenue #256  
Reno, NV 89509

  
Kelsi Bryant  
Carucci and Associates

**EXHIBIT A**

**EXHIBIT A**

FILED

2020 OCT -5 AM 11:25

TANYA SCEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Victoria Tova DEPUTY

1 CASE NO.: 15-CV-00418

2 DEPT. NO.: 2

3 The undersigned hereby affirms this document  
4 does not contain a social security number.

5  
6  
7  
8 IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR THE COUNTY OF LYON  
10

11  
12 ANTHONY JACOB MONAHAN,

13 Plaintiff,

14 vs.

15 AMANDA KAITLYN HOGAN fka  
16 AMANDA KAITLYN KING,

17 Defendant.  
18  
19  
20

ORDER AFTER SEPTEMBER 15, 2020

HEARING; ORDER GRANTING MOTION

TO RELOCATE WITH MINOR CHILD

21 The parties appeared before the Court on September 15, 2020, for a hearing on  
22 Defendant, Amanda Kaitlyn Hogan's ("Mother") Motion to Relocate, filed June 8, 2020.  
23 Plaintiff, Anthony Jacob Monahan ("Father"), was present and represented by counsel,  
24 Aaron Bushur, Esq. Defendant, Amanda Hogan, was present and represented by counsel,  
25 Roderic A. Carucci, Esq. of Carucci and Associates. The Court, having heard argument  
26 and testimony of the parties, having considered the pleadings and papers on file herein,  
27 and the Court being fully advised in the premises, now finds and orders as follows:  
28

1           1.     The Court has jurisdiction over the parties and the subject matter.

2           2.     Nevada is the home state and habitual residence of the minor child.

3           3.     The parties have one minor child the issue of their relationship: Malakai  
4     Jaco Monahan, born July 18, 2012.

5           4.     The Court's most recent custodial order was entered on November 20, 2019.  
6     The parties share joint legal custody of the minor child. Mother has primary physical  
7     custody of the minor child, subject to Father's custodial time.

8           Father presently exercises custody of Malakai for 10 continuous days each month  
9     beginning on the first Friday of each month at approximately 5:00 p.m. and ending on the  
10    second Monday morning thereafter, when school commences, or at approximately 5:00  
11    p.m., if school is not in session.

12          5.     Mother has been married to Brandon Hogan since August 28, 2018. Mr.  
13     Hogan is a Lieutenant with the United States Navy on active duty. Mr. Hogan is  
14     presently serving as a Top Gun flight instructor at the Fallon Naval Air Station. Mother  
15     and Mr. Hogan reside in Fallon, Nevada, and Father resides in Yerington, Nevada.

16          6.     Mother moved the Court for permission to relocate with the minor child  
17     pursuant to NRS 125C.006 from Fallon, Nevada to Virginia Beach, Virginia on June 8,  
18     2020. In her motion, Mother requested permission to relocate based upon Mr. Hogan's  
19     reassignment to the United States Naval Base at Virginia Beach, Virginia beginning in  
20     September, 2020.

21          7.     Father filed an opposition to the motion on July 18, 2020, objecting to the  
22     request to relocate.

23          8.     The parties appeared for an evidentiary hearing on Mother's motion to  
24     relocate on September 15, 2020. At that time, the Court received evidence and heard  
25     testimony from the parties.

26          9.     NRS 125C.007 provides statutory guidance to the Court regarding the factors  
27     which must be considered in granting a petition to relocate. Having considered the factors  
28     set forth in NRS 125C.007, the Court makes the following findings:

1 (1). In every instance of a petition for permission to relocate with a child  
2 that is filed pursuant to NRS 125C.006 or 125C.0065, the relocating parent  
must demonstrate to the court that:

3 (a) There exists a sensible, good-faith reason for the move, and the  
4 move is not intended to deprive the non-relocating parent of his or her  
parenting time;

5 The Court finds Mother has demonstrated a good-faith basis for  
6 her request to relocate with the minor child. Mother's request is not  
7 intended to deprive Father of his parenting time. Mother's Husband  
8 is active duty military and has been reassigned to Virginia Beach,  
9 Virginia.

10 (b) The best interests of the child are served by allowing the  
11 relocating parent to relocate with the child; and

12 The Court finds it is in the minor child's best interest to  
13 relocate with Mother to Virginia. The Court previously considered the  
14 best interest factors in its' November 20, 2019 Order which granted  
15 Mother primary physical custody of the minor child, and the relocation  
16 does not modify any prior best interest factor findings. Mother's future  
17 move based upon her Husband's reassignment was contemplated at  
the time of the last custodial order.

18 (c) The child and the relocating parent will benefit from an actual  
19 advantage as a result of the relocation.

20 The relocation will provide an improvement in the overall  
21 quality of life for both the minor child and Mother. Mother testified  
22 she researched the schools in Virginia and that the academic perfor-  
23 mance is greater than the child's current school. The child will benefit  
24 from greater educational opportunities in Virginia including access to  
25 outside tutoring and other educational resources which are not readily  
26 available to the child in Fallon. As Virginia Beach is a much larger  
27 city, the child will also benefit from greater opportunities and  
28 activities. Additionally, Mr. Hogan indicated he will receive a

1 promotion to the rank of Lieutenant Commander after the relocation  
2 which will provide better economic opportunities for the minor child  
3 and Mother. This increase in income will allow Mother the opportu-  
4 nity to stay home with the minor child, and the child's half sibling. If  
5 Mother is not permitted to relocate, her household will incur addi-  
6 tional expenses for maintaining two households which is a disadvan-  
7 tage to the child.

8 (2). If a relocating parent demonstrates to the court the provisions set forth  
9 in subsection 1, the court must then weigh the following factors and the  
10 impact of each on the child, the relocating parent and the non-relocating  
11 parent, including, without limitation, the extent to which the compelling  
12 interests of the child, the relocating parent and the non-relocating parent are  
13 accommodated:

14 (a) The extent to which the relocation is likely to improve the  
15 quality of life for the child and the relocating parent;

16 The relocation will improve the quality of life for both the minor  
17 child and Mother. They will have better living accommodations, a  
18 higher household income with Mr. Hogan's promotion and more  
19 financial stability, educational advantages, and advantages associated  
20 with residing in a much larger city.

21 (b) Whether the motives of the relocating parent are honorable and  
22 not designed to frustrate or defeat any visitation rights accorded to  
23 the non-relocating parent;

24 The Court finds Mother's request to relocate is honorable and  
25 not designed to frustrate or defeat Father's visitation. Mother's  
26 husband is active duty military and has been reassigned to duty in  
27 another state. Mother's Husband's reassignment, and the child's  
28 possible relocation was contemplated at the last hearing.

(c) Whether the relocating parent will comply with any substitute  
visitation orders issued by the court if permission to relocate is  
granted;

There is no evidence that Mother would not comply with  
supplemental orders regarding custody.

1 (d) Whether the motives of the non-relocating parent are honorable  
2 in resisting the petition for permission to relocate or to what extent  
3 any opposition to the petition for permission to relocate is intended to  
4 secure a financial advantage in the form of ongoing support obligations  
5 or otherwise;

6 Father's motives in contesting the relocation are honorable and  
7 the objection was filed in good faith. Father indicates he wishes to  
8 maintain a relationship with the minor child.

9 (e) Whether there will be a realistic opportunity for the non-relo-  
10 cating parent to maintain a visitation schedule that will adequately  
11 foster and preserve the parental relationship between the child and  
12 the non-relocating parent if permission to relocate is granted; and

13 While the relocation will have an impact upon Father's  
14 relationship with the minor child, there are opportunities which will  
15 allow Father to continue to maintain a relationship with the minor  
16 child despite the relocation.

17 (f) Any other factor necessary to assist the court in determining  
18 whether to grant permission to relocate.

19 This factor is not applicable.

20 10. After considering the evidence presented and the testimony of the parties,  
21 and having weighed the above factors, the Court finds that Mother has met the threshold  
22 requirements to grant the request to relocate with the minor child to the State of Virginia.  
23 Relocation is in the minor child's best interest. Mother may relocate with the minor child  
24 immediately.

25 11. Father shall have custodial time with the minor child during the child's  
26 school breaks based upon the school calendar in the district in which the child will be  
27 attending school.

28 A. Father shall have custody of the minor child the majority of the child's  
summer break. Father's custodial time shall begin one week after the school year ends for  
the summer and shall end one week before the new school year begins.

B. The parties shall equally share the child's Christmas Break from school. In  
even numbered years, Father shall have the child for the second half of the break

1 (including the Christmas holiday), and Mother shall have the child for the first half of the  
2 break. In odd numbered years, Mother shall have the child for the second half of the break  
3 (including the Christmas holiday), and Father shall have the child for the first half of the  
4 break. Mother shall have Thanksgiving break in each year except 2020, when Father  
5 shall have the child from Wednesday before Thanksgiving, return on the following  
6 Sunday.

7 C. Father shall have custody of the minor child during the child's Spring Break  
8 each year.

9 D. Should Father choose to travel to Virginia Beach, Virginia where the minor  
10 child is residing, he shall be entitled to additional custodial time. Father shall provide at  
11 least 60 days advance notice of his intent to visit with the child in Virginia Beach. Notice  
12 shall be in writing. If Father travels to Virginia during a week day, the visit shall begin  
13 after school and end at 8:00 p.m. the same day. If Father travels to Virginia over the  
14 weekend, the visit shall begin at 8:00 a.m. and end at 10:00 p.m. the same day.

15 E. Father shall be solely responsible for the costs of air travel for the child for  
16 each visit. Father shall provide proof of purchase of plane tickets to Mother at least 30  
17 days in advance of each visit or that visit will be forfeited. Father shall receive a  
18 downward deviation on his monthly child support obligation for the cost of travel. The  
19 Court will issue a separate order regarding child support which will address deviations  
20 for cost of travel.

21 F. The parties may modify the custodial schedule by mutual agreement in  
22 writing.

23 G. The non-custodial parent shall be entitled to communicate with the minor  
24 child telephonically during the child's reasonable waking hours. Mother shall provide a  
25 cell phone at her expense for the minor child on which Father may contact the child. The  
26 phone shall also be made available to the child at all times during Father's custodial time  
27 so that Mother may contact the child. The minor child shall be permitted to contact either  
28 parent at any time. Telephonic communication shall not be monitored by either parent

1 at any time.

2 H. Neither party shall disparage the other in the presence of the child, or allow  
3 third parties to disparage the other parent in the presence of the child.

4 12. The parties shall continue to share joint legal custody of the minor child in  
5 accordance with the prior order of this Court.

6 13. As Mother's husband is on active duty with the military and it is likely he  
7 will be reassigned in the next few years, the parties expressly agreed on the record that  
8 Mother may relocate with the minor child to any other location in the United States based  
9 upon the reassignment. Mother shall provide Father with the appropriate advance notice,  
10 but she is not required to obtain Father's permission before relocating. Should Father  
11 object to the relocation, he may file a motion with the Court. Relocation outside of the  
12 United States shall require either Father's written permission or permission from the  
13 Court before relocation occurs. The parties stipulate that this Court shall retain exclusive  
14 continuing jurisdiction over the minor child pursuant to the UCCJEA provided that  
15 Father remains a resident of the State of Nevada.

16 14. Mother's request for an award of attorney's fees and costs based upon  
17 allegations that Father wrongfully withheld consent to the relocation is denied. Each  
18 party shall be responsible for their own attorney's fees and costs.

19 15. PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEAL-  
20 MENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISH-  
21 ABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359  
22 provides that every person having a limited right of custody to a child or any parent  
23 having no right of custody to the child who willfully detains, conceals or removes the child  
24 from a parent, guardian or other person having lawful custody or a right of visitation of  
25 the child in violation of an order of this court, or removes the child from the jurisdiction  
26 of the court without the consent of either the court or all persons who have the right to  
27 custody or visitation is subject to being punished for a category D felony as provided in  
28 NRS 193.130.

16. The parties are hereby put on notice that the terms of the Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague Conference on Private International Law, apply if a parent abducts or wrongfully detains a child in a foreign country.

IT IS SO ORDERED.

DATED this 2nd day of October, 2020.

DISTRICT JUDGE

CARUCCI AND ASSOCIATES  
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