IN THE SUPREME COURT OF THE STATE OF NEVADA

TODD MATTHEW PHILLIPS,

Appellant,

v.

AMBER PHILLIPS, N/K/A AMBER KORPAK

Respondent.

Supreme Court No: 82414
District Court Case No: D-18-578142-D

CHILD CUSTODY FAST TRACK RESPONSE

1. Name of party filing this fast track response: Amber Korpak, Respondent

2. Name, law firm, address, and telephone number of attorney or proper person respondent submitting this fast track response:

Shannon R. Wilson, Esq., Hutchison & Steffen, PLLC, 10080 West Alta Drive, Ste. 200, Las Vegas, NV 89145, 702-385-2500

3. Proceedings raising same issues. If you are aware of any other appeal or original proceeding presently pending before this court, which raise the same legal issue(s) you intend to raise in this appeal, list the case name(s) and docket number(s) of those proceedings: None.

4. Procedural history. Briefly describe the procedural history of the case only if dissatisfied with the history set forth in the fast track statement (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):

The full procedural history of this case is exceedingly long due to Appellant filing more than 95 papers in the divorce case, and he filed more than 35 papers in the protective order case. Respondent's procedural history recounts only that which is directly relevant to the appeal. Citations to the record transmitted by the court clerk are cited by volume and page number.

On September 17, 2018, Respondent filed a request for a temporary order of protection ("TPO") (SA 1-10), which was granted on September 18, 2018, in Case No. T-18-191733-T. SA 11-15. On October 8, 2018, Respondent filed a request to extend the TPO. SA 29-30. Appellant opposed the request for the TPO. SA 16-28. A full-day trial was had on the EPO request, and the EPO was granted. SA 33-41. In a hearing on August 22, 2019, the Court continued the EPO as a condition of granting Appellant's request for trial. V6, p 1163, 1170; see also SA 43. Neither the TPO nor the EPO applied to minor child; both did exclude Appellant from the child's school.

On October 5, 2018, Respondent filed a complaint for divorce. V1, pp 1-5. Service of the summons and complaint was made on October 18, 2018. V1, pp 6-7. Appellant requested additional time to Answer. V1, pp 21-23. On December 7, 2018, Appellant filed an answer. V1, pp 24-30. On December 10, 2018, the Court issued an order for child custody mediation through the Family Mediation Center. V1, p 31. Mediation was not successful.

On December 20, 2018, Respondent filed a motion for interim orders regarding exclusive possession of the marital residence, child custody, support, and visitation and spousal support. V1, pp 36-59. Appellant filed his opposition on January 28, 2019, one day before the hearing. V1, pp 332-339. The order arising from Respondent's motion was filed on February 11, 2019 (*See* V2, pp 376-378),

and it provided in relevant part that Respondent [Plaintiff below] would have temporary sole legal custody of the minor child, temporary primary physical custody subject to teenage discretion, that Respondent would enroll the child in individual therapy, that Appellant and the child would enroll in reunification therapy, that Appellant would pay $100 per month child support and $100 per month spousal support, both subject to retroactive reallocation at the time of trial, and the child to be interviewed by the Family Mediation Center *after* a period of reunification therapy between Appellant and the child. *I.d.* However, Appellant failed and refused to participate in reunification therapy; therefore, the FMC referral order was amended to remove that condition precedent to the FMC child interview order filed on June 6, 2019. V4, pp 715-716. The child was interviewed by FMC on July 11, 2019. It does not appear that the clerk included the child interview report in the record.

During the course of the litigation, the temporary orders were affirmed multiple times. *See e.g.,* V4, pp 737-740; *see also* V4, pp 761-762; *see also* V4, pp 783-784. Additionally, in an order filed June 11, 2019, the Court added an option for Appellant to have visitation with the child at Donna's House. V4, pp 751-754. In an order filed June 10, 2019, the Court added a schedule on which Appellant could phone the child. V4, pp 729-731. In an order filed December 19, 2020, the Court

allowed that Appellant could choose the reunification therapist, something to which Respondent stipulated. V12, pp 2499-2500 at ¶6.

Appellant filed several requests to continue the trial. *See* Request to Continue Trial Date filed May 12, 2021, V3, pp 503-508; *see also* Motion for Continuance filed July 16, 2019, V4, pp 789-793; *see also* Supplemental Declaration in Support of Motion for Continuance filed July 29, 2019, V5, pp 991-996; *see also* Motion to Continue Trial Date filed December 13, 2021, V6, pp 1224-1228. The first was denied. His second and third requests were heard during the Calendar Call on August 22, 2019. During the Calendar Call, several issues were resolved by stipulation, including the division of assets and debts, child support, and alimony. V6, pp 1162-1172. Having resolved all issues by stipulation, except for child custody and visitation, as a condition of granting Appellant's request to continue trial, the court bifurcated the proceedings, granted the parties divorce, and continued the extended order of protection to the trial date. *I.d.* With respect to the court's continuance of the EPO, Appellant filed a Verified Petition for Writ of Prohibition in this Court on September 30, 2019. On October 8, 2019, the court of appeals issued an Order Denying Petition for Writ of Prohibition. The court of appeals wrote inter alia that Phillips' petition was denied for failure to meet his burden that a writ petition was warranted at that time, but also indicated based on facts Phillip's put in

his petition, that it appeared the judge's actions were consistent with NRS 33.080(3). On file with this Court, Case No. 79709.

Trial was held on two days, December 20, 2019 and October 19, 2020. The Court's Decision and Order was filed on December 19, 2020. V12, pp 2434-2502.

5. Statement of facts. Briefly set forth the facts material to the issues on appeal only if dissatisfied with the statement set forth in the fast track statement (provide citations for every assertion of fact to the appendix or record, if any, or to the transcript or rough draft transcript):

Contrary to the assertions of Appellant's fast track statement, neither his parental nor custodial rights were "terminated." Throughout the district court proceedings, including in the final decree of custody, the Court provided opportunities for reunification therapy and visitation at Donna's House for which Appellant has repeatedly failed and refused to avail himself. *See e.g.*, V2, pp 376-378; *see also* V12, pp 2434-2502; *see also* V4, pp 737-740; *see also* V4, pp 761-762; *see also* V4, pp 783-784.

This is a divorce action with one minor child. V12, p 2435 at ¶2. The parties married October 14, 2000 in Las Vegas, Nevada. V12, p 2435 at ¶1. They have one minor child, a son, born November 8, 2005, making him just shy of 13 years old when the complaint was filed, and he will be 16 years old in four months. V12, p 2435 at ¶2. On September 16, 2018, Mom and child moved out of the marital residence. V12, p 2445 at ¶36. North Las Vegas Police Department were called

when Dad badgered the child about leaving with Mom. V12, p 2449 at ¶47. NLVPD talked with all parties individually and remained until Mom and child finished packing and left. *I.d.* Actions for the protective order and divorce followed.

Dad does not have an undergraduate decree, but he attended law school in California where, inexplicably, he has held a license to practice law for approximately thirty (30) years. V2, p 385. He produced no evidence during discovery or at trial of his income, beyond his financial disclosure forms which were not supported by the required documents. *See* V2, pp 385-392; *see also* V10, pp 1926-1933; *see also* V11, pp 2136-2143. He stipulated to an imputed income of $60,000. V6, p 1168 at line 4-8.

Mom has a high school diploma and some college courses. V12, p 2450 at ¶52. For several years preceding the filing of the divorce Mom worked in daycare/pre-school settings. *I.d.* Several months after the divorce was filed, she became a full-time child caregiver to a toddler. *I.d.* She now does medical transcription. V12, p 2462 at ¶96.

The minor child excels in school; he likes video games and robotics. V12, p 2462 at ¶54. During the litigation, per court order requested by Mom, he attended therapy for several months. V2, p 377 at ¶5. Mom periodically checks in with the child to see if he wants to go back, he has not wanted to. V12, p 2462 at ¶54. The

Court also ordered reunification therapy for the child and Dad. *See* V6, p 1166 at ¶8; *see also* V12, p 2484 at ¶1; *see also* V12, p 2499 at ¶6. Dad has not availed himself of those orders, nor has Dad availed himself of visits at Donna's House as were also ordered by the Court. V12, p 2437 at ¶8. The child has his own cell phone, which he had before the parties separated. V3, p 516 at ¶7. Initially, he texted with Dad occasionally. V3, p 516-517. Mom tried but could not persuade him to call Dad or answer Dad's calls. V12, p 2456 at ¶70. The FMC child interview provided useful information, but Dad refused to allow it into evidence during the trial. V12, p 2479 at ¶3. This Court van see by the voluminous record transmitted by the district court that Appellant filed many more papers than are covered here including multiple motions to disqualify the Judge, all of which were late and denied. V9, pp 1777-1790.

Since the court clerk transmitted the record on appeal, Appellant has continued to file numerous motions and other papers in the district court including at least five motions, three of which have been denied and two more that are anticipated to be denied. Appellant continues to threaten more litigation against respondent as well as her counsel. In fact, Appellant has filed a lawsuit naming Judge Vincent Ochoa, Hutchison & Steffen, Shannon R. Wilson, and Amber Korpak in the federal district court, a motion to dismiss filed on behalf of the firm, Ms. Wilson, and Ms. Korpak, is pending.

6. Issues on appeal. State concisely your response to the principal issue(s) in this appeal. Appellant stated thirty-eight issues in his first amended Fast Track Statement. Therefore, Respondent has combined her concise statement in response with her legal argument and citation to authorities for the sake of brevity.

ISSUE 1. Must child custody orders be subjected to "strict scrutiny?" No, child custody orders are not subject to strict scrutiny. The standard of review of child custody orders on appeal is a highly deferential abuse of discretion standard except where errors of law are concerned no deference is owed. *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996); *see also Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142 (2015). The sole consideration for the district court is the best interest of the child. *Davis v. Ewolefo,* 131 Nev. at 450, 352 P.3d at 1142. The district court's order must make specific, relevant findings that tie to the best interest of the child factors found in NRS 125C.0035(4) or any other factors that are relevant to the custody determination made. *Id.* at 451, 1143. Here the district court made an abundance of findings to support its orders. V12, pp 2434-2502.

Appellant's legal argument cites to NRS 126.036. NRS Chapter 126 governs determinations of parentage, which is not at issue here. While it is true the United States Supreme Court recognized the right of parents to be an active and integral part of their children's lives as "perhaps the oldest of the fundamental liberty interests recognized by [the] Supreme Court," those rights are not unfettered. *Troxel v. Granville*, 530 U.S. 57 (U.S. 2000). The rights of parents are not beyond limitation, and the state can and shall

act to guard the well-being of children when their parents will not. *Prince v. Massachusetts*, 321 U.S. 158, 167, 64 S. Ct. 438, 442, 88 L. Ed. 645 (1944) ("the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare").

ISSUE 2. Does the judge's custody order—terminating appellant's custodial rights—pass the strict scrutiny test? As set forth in the statement of facts above, Appellant's custodial rights were not terminated. This is the first of several issues raised by Appellant concerning the alleged "termination" of his "custodial rights." Appellant does not distinguish between legal custody and physical custody. The District Court granted Respondent sole *legal* custody, with the requirement that Respondent shall identify Appellant "as father on all documents requesting the identity of the father such as school records or doctor's intake information." V12, p 2499. Additionally, Respondent is required to keep Appellant apprised of major life decisions such as medical treatment, and Appellant is permitted to request records directly from the school. *Id.* The District Court's analysis supporting its legal custody order cites *inter alia* NRS 125C.002, *Rivero v. Rivero*, 125 Nev. 410 (2009), *Troxel v. Granville*, 530 U.S. 57, 65 (2000). The District Court granted Respondent primary physical custody and reunification therapy for Appellant and the child. V12, pp 2499-2500. The Court's orders with respect to custodial rights are reviewed upon an abuse of discretion standard, not strict scrutiny as Appellant

asserts. The District Court's sixty-eight (68) page decision and order is replete with factual findings and conclusions of law that support its orders. V12, pp 2434-2502.

ISSUE 3. Is the 'best interest of the children' standard constitutional? Yes. Appellant fails to comprehend that the fundamental rights of parents found in the U.S. Constitution are attendant and presumed in NRS Chapter 125C. For example, NRS 125C.0035(1)(a) states an order of preference for awarding custody of children and atop of that list are the parents. Of course, following that preference are a host of factors and considerations that the Court must weigh to do what is in the best interest of a child, which is the expectation of the United States Supreme Court, which has affirmed the State's right–indeed duty–to protect minor children through a judicial determination of their interests after notice and an opportunity to be heard. *See e.g., Stanley v. Illinois*, 405 U.S. 645, 650-51, 92 S.Ct. 1208, 1212, 31 L.Ed.2d 551 (1972). As is true in so many matters of due process and constitutional rights, there inevitably must be a balancing between the rights of others, including the State, and the individual, and in this case between Todd Phillips and his minor son.

ISSUE 4. Is the D.V. [domestic violence] presumption at NRS 432B.157 constitutional? NRS Chapter 432B governs actions initiated by the removal of children from their parent or other legal custodian by the State of Nevada Division of Child and Family Services ("DCFS"). This case does not involve DCFS. Therefore, any question

regarding the Constitutionality of NRS 432B.157 has no applicability to this case and is not addressed by Respondent.

ISSUE 5. Must a complaint for divorce allege FACTS to support a party's claim for sole custody? A complaint for divorce must follow the notice pleading rules of NRCP 8(a), which Respondent's complaint does. V1, pp 1-5. It includes a short, plain statement of the grounds for jurisdiction of the Plaintiff and the minor child. *Id*. at pp 1-2.. It includes a short and plain statement of the claim showing that she is entitled to the relief sought. *Id*. at pp. 2-3. Finally, it includes a demand for the relief sought. *Id*. at pp. 3-4.

Appellant raised this issue below in a motion to dismiss filed October 12, 2020. V11, pp 2101-2105. This was more than two years after the complaint was filed and served, and seven days prior to the second trial day. The district court denied the motion. V11, pp 2114-2123.

ISSUE 6. Should the judge have sustained Phillips' objection to Korpak's divorce complaint—on the basis that it "fails to state a cause of action" for sole custody? No, the Court should not have sustained this objection to Respondent's complaint for divorce. This is addressed at length in response to Issue 5, above.

ISSUE 7. Can a family court judge terminate the custodial rights of a parent who has not been found "unfit?" As explained in Response to Issue 2, the district court did not terminate Appellant's custodial rights. Appellant cites no facts from the record

or law in support of issue 7. The District Court's sixty-eight (68) page decision and order is replete with factual findings and conclusions of law that support its orders. V12, pp 2434-2502.

ISSUE 8.Can a family court judge terminate custodial rights of a parent where there is no harm to the child? As explained in Response to Issue 2, the district court did not terminate Appellant's custodial rights. Appellant cites no facts from the record or law in support of Issue 8. The District Court's sixty-eight (68) page decision and order is replete with factual findings and conclusions of law that support its orders, including that dad's conduct is harmful to the child. V12, pp 2434-2502. Appellant did not allow fluoride toothpaste (*id.* At 2450-2452); he complained about dentist and doctor visits and prescription medication for the child (*id.*); he did not allow friends to the home (*id.* at 2451); he imposed restricted diet lacking nutritional balance (*id.* at 2453). Since leaving the martial residence things have improved markedly for the child, Since leaving Defendant's home, the child is acting more carefree and child-like and does not need to act as a protector to his mother. He now has friends and has his friends over to Plaintiff's house. He also is more independent now and cooks for himself." *I.d.* at 2451. Additionally, the child now has routine medical and dental care (*id.* at 2451-2452) and eats a wide variety of foods (*id.* at 2453).

ISSUE 9.Can a family court judge terminate custodial rights based only on "he-said/ she-said" allegations from a TPO case that have absolutely no evidentiary support? Here again, there was no termination of custodial rights. Appellant cites no law. It is unclear whether Appellant is conflating this issue with judicial notice addressed in Issue No. 17. Regardless, Appellant incorrectly characterizes Respondent's sworn testimony -- be it in the TPO evidentiary hearing or in the custody trial -- as "he-said/she-said allegations. The sworn testimony of a party can give rise to clear and convincing evidence that satisfies the elements of whatever law is at issue. The Decision and Order entered December 19, 2020, *without* reliance on the Orders of the T-case, set forth extensive findings of fact from which conclusions of law could be made by clear and convincing evidence that Appellant engaged in acts of domestic violence supporting the court's order granting Respondent sole legal and primary custody of the child. R at V12, pp 2443-2461, 2469-2478. "In light of the dangers that domestic violence poses to a child's physical, emotional and mental health, [Nevada's] legislature enacted NRS 125C.230(1), which creates a rebuttable presumption that a person who has engaged in on or more acts of domestic violence should not be given custody of a child." *Castle v. Simmons*, 120 Nev. 98, 101, 86 P.3d 1042, 1045 (2004). The District Court determined that Appellant did not rebut this presumption stating, "His case in chief during this

trial was void of substantive testimony regarding this presumption." V12, p 2478.

ISSUE 10.Can a hearing master issue a domestic violence TPO based on violation of a website? Once again, Appellant cites no law in support of his argument. This issue is not properly before the Court because it challenges a ruling made in the case number T-18-191733-T filed on November 5, 2018, which granted Respondent's request for an extended order of protection from domestic violence against Appellant. SA 33-41. Appeals may only be taken when authorized by statute or court rule. *Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984). No statute or court rule authorizes an appeal from a district court order denying an application for a temporary or extended order for protection against domestic violence. *See* NRAP 3A(b) (listing appealable determinations).

ISSUE 11. Do family court judges have jurisdiction to issue "permanent" custody orders based on D.V. findings? Yes, family court judges have the same constitutional authority as all district court judges. Additionally, see response following issue no. 13, below.

ISSUE 12. Can a family court judge make a finding of "domestic violence?" Yes, family court judges are not only permitted to make findings of

domestic violence, in some cases it is required pursuant to *inter alia* NRS Chapter 125C. Additionally, see response following issue no. 13, below.

ISSUE 13. Are family court judges competent to make findings that parents committed "crimes?" Yes, family court judges are competent to make criminal findings, but that was not required here and that is not what the court did.

Due to the relatedness of issues 11, 12, and 13, these are addressed here, together. In issue 11, Appellant asks whether family court judges have jurisdiction to issue permanent custody orders based on findings of domestic violence (they do); in issue 12, he asks if they can make findings of domestic violence (they can); in issue 13 he asks if they are competent to make findings that parents committed crimes (they are, although that is not what happened here).

NRS 3.223 lists those chapters of the Nevada Revised Statutes over which the family court has original, exclusive jurisdiction. However, this Court has held that district court judges in the family division have the same constitutional power and authority as any district court judge. *Landreth v. Malik*, 127 Nev. 175, 186, 251 P.3d 163, 170 (2011). This is the authority for family court judges of the district courts of Nevada to do all of those things that Appellant questions.

With respect to findings of domestic violence, NRS 125C.0035(6) and NRS 125C.230(1) state that there is a rebuttable presumption that joint custody is presumed *not* to be in best interest of the child if, after an evidentiary hearing, the

court finds by clear and convincing evidence that "a parent has engaged in one or more *acts* of domestic violence against the child, a parent of the child or any other person residing with the child." (NRS 125C.0035(6) emphasis added; *see also* NRS 125C.230(1).) NRS 125C.0035(10)(b) defines domestic violence as "the commission of any act described in NRS 33.018." NRS 33.017 *et seq* is the statute that governs *inter alia*, the issuance of orders for protection against domestic violence. No criminal statute was employed in the conclusions of law in this case.

ISSUE 14. Does the doctrine of res judicata (and/or double jeopardy) prevent the family court judge from trying Phillips twice for D.V.? Neither of these doctrines is applicable here.

Appellant cites no law. As discussed in response to issues 11 – 13, immediately above, appellant was not adjudicated guilty of a crime. He was found to have engaged in acts of domestic violence pursuant to NRS 125C.0035(6) and NRS 125C.230 as defined by NRS 33.018, for purposes of deciding custody issues. Therefore the 'double jeopardy' clause of the Fifth Amendment to the U.S. Constitution does not apply.

Principles of *res judicata* do not apply here either. In 2008, the Court decided *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008) (holding modified by *Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015). The *Five Star* Court joined a number of jurisdictions and the United States

Supreme Court that dispensed with the blanket concepts of *res judicata* and *collateral estoppel* in favor of the terms 'issue preclusion' and 'claim preclusion.' *Five Star Cap. Corp. v. Ruby*, *supra* 124 Nev. at 1054, 194 P.3d at 713 (2008). The Court went on to define the elements of each. Issue preclusion (formerly *res judicata*) applies when: (1) the issue decided in the prior litigation is identical to the issue presented in the current action; (2) the initial ruling was on the merits and became final; (3) the party against whom the judgment is asserted was a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated. *Id.* at 1055, 713. Although the same facts regarding acts of domestic violence were considered in both proceedings, the issues decided were different, and indeed could not have been brought in the same action, i.e., child custody issues could not be tried with a request for an order of protection. Therefore, issue preclusion is not applicable in the instant appeal.

ISSUE 15. Did the judge err by ignoring Phillips' evidence? Here, the evidence to which Appellant is specifically referring is a police report from September 16, 2018. That was the day Respondent and the minor child left the marital residence and had to call the North Las Vegas Police Department in order to leave over Appellant's objections to Respondent taking the minor child with her. V12, pp 2437, 2448-2449. However, it does not appear that this report was placed into evidence during the custody trial. *Id*. at pp 2434-2502. Even if it was, whether the report specifically stated "domestic

violence" occurred or not is not dispositive of the issue. Police reports do not make conclusions of law. The District Court's sixty-eight (68) page decision and order is replete with factual findings and conclusions of law that support that Appellant did engage in acts that constitute domestic violence as that term is defined by NRS 125C.0035(10(b). V12, pp 2469-2478.

ISSUE 16. Was the TPO Ruling (Nov. 2018) properly admissible in the parties' custody hearing? Yes, it was proper for the Court to take judicial notice and review the findings of fact, conclusions of law, and order that was issued on November 5, 2018, following an evidentiary hearing that gave rise to the extended order of protection in case no T-18-191733-T. The District Court set forth the legal authority for its decision to do so at length. *See eg.*, V12, pp 2469-2471; *citing* NRS 47.150 and *Occhiuto v. Occhiuto,* 97 Nev. 143, 625 P.2d 658 (1981); *see also* V12, pp 2506-2509.

ISSUE 17. Did the court err by taking judicial notice of the 2018 TPO? No, see response to Issue 16, above.

ISSUE 18. Did the court violate appellant's civil rights by issuing a series of "temporary" custody order that exceeded 6 months in the aggregate? No, the Court did not violate appellant's civil rights by issuing a series of temporary custody orders that exceeded 6 months in the aggregate. Here, Appellant actually cited a rule, Nevada Supreme Rule 251 states the district court shall "resolve the issues affecting the custody or visitation of the child or children within six months of the date that such issues are

contested by the filing of a responsive pleading that contests the custody or visitation issues." However, the rule goes on to say that "in [e]xtraordinary cases that present unforeseeable circumstances may be subject to extensions of time beyond the six-month period only upon entry by the court of specific findings of fact regarding the circumstances that justify the extension of time." Here, the majority of extensions of time were of the Appellant's own making. He filed no less than four requests to continue the trial. *See* V3, pp 503-508; *see also* V4, pp 789-793; *see also* V5, pp 991-996; *see also* V6, pp 1224-1228. He filed serial motions to have the district court judge disqualified, all of which were denied. *See* V7, pp 1266-1282; *see also* V7-8, pp 1456-1493; *see also* V8, pp 1508-1516; *see also* V8, pp1580-1597; *see also* V8, pp 1598-1611; *see also* V8, pp 1641-1653; *see also* V3, pp1777-1790. And then, the Covid-19 pandemic occasioned a final continuance from approximately March 2020 to October 2020, at which time the trial was concluded. V10, pp 1915-1919. Therefore, the only person Appellant has to blame for the duration it took to conclude trial is himself.

ISSUES 19-25. Appellant has mischaracterized the facts set forth in issues 19 through 25. Respondent responds to those issues together here. Appellant argues that on September 16, 2019, Judge Ochoa entered a temporary protection order against him in the absence of: (a) an application for an order of protection against domestic violence; and (b) without providing him notice and opportunity to be heard. This is not what happened. In response to Appellant's request to continue trial, as a condition of granting

the continuance, the court extended the existing protection order ("EPO") that had not yet expired; he did this in a hearing held August 22, 2019, and the written order was reflected in the Decree filed September 27, 2019. V6, p 1163 at ¶10. This was the existing EPO that issued upon an application that was duly filed and served and upon which there was a full-day evidentiary hearing on November 2, 2018, in which Appellant appeared, examined and cross-examined Respondent, and gave his own testimony. SA 33-41. Detailed findings of fact and conclusions of law were filed on November 5, 2018, order granting the EPO. Id. NRS 33.080(3), allowed Judge Ochoa to extend the existing order of protection, which he did only because Appellant requested to continue the child custody trial, and the extension of the EPO was made to coincide with the new trial date. V6, p 1163 at ¶10. Plaintiff's rights to notice and opportunity to be heard were never denied or undermined in any way. The August 22, 2019, order that continued the EPO was filed in the D-Case; therefore, that Order would not, by itself, notify law enforcement of the extension. It needed to be reflected in the T-Case too. Therefore, on September 16, 2019, Judge Ochoa completed and filed a court form in case number T-18-191733-T to effectuate his August 22, 2019, order in the D-Case to extend the EPO. SA 43.

ISSUE 26. Should the judge have recused himself after his failed attempt to declare Phillips a vexatious litigator? Respondent has no knowledge

or information that Judge Ochoa sought to deem Phillips vexatious. In her March 10, 2020 opposition to papers filed by Appellant, Respondent sought included a countermotion to deem Phillips vexatious. V9, pp 1691-1694. Chief Judge Linda Bell's Order found that this issue should be raised before Judge Ochoa. V9, p 1788.

ISSUE 27. Can a judge seek affirmative relief—in the form of a vexatious litigant motion—via an affidavit? Respondent has no knowledge or information regarding this issue. See response to issue 26.

ISSUE 28. Should the judge have recused himself after Phillips sued him in federal court over the Facebook blocking incident? Respondent has no knowledge or information regarding this issue.

ISSUE 29. Should the judge have recused himself based on opposing counsel's law firm giving money to the bench? As stated in the order entered Jan. 29, 2021, denying one of Appellant's many motions to disqualify Judge Ochoa, Hutchison & Steffen's campaign contributions are not grounds for disqualification. City of Las Vegas Downtown Redevelopment Agency v. Eighth Judicial Dist. Court ex rel. County of Clark, 5 P.3d 1059, 1062 (Nev. 2000); Ivey v. Dist. Ct., 299 P.3d 354, 359 (Nev. 2013). V8, pp 1499-1500.

ISSUE 30. Should judges recuse themselves . . .when the judge has actual knowledge that the litigant is the whistleblower who caused the judge to be fined? Respondent has no knowledge or information regarding this issue.

ISSUE 31. Can a judge hear their own recusal motion? Respondent has no knowledge or information regarding this issue.

ISSUE 32. Did the court err by not giving appellant a jury trial? Appellant filed a demand for jury trial on July 29, 2019, seeking to have all issues of the divorce heard by jury. V5, pp 988-990. The court denied his request. V6, p 1162. The District Court did *not* err in denying Appellant's demand for a jury trial. Pursuant to NRS 125.070, "[t]he judge of the court shall determine all questions of law and fact arising in any divorce proceeding under the provisions of this chapter." *Barelli v. Barelli*, 113 Nev. 873, 879, 944 P.2d 246, 249 (1997) (no right to a jury trial in matrimonial proceedings). Prior to 2013, provisions regarding child custody resided in NRS Chapter 125, but in that year, they were placed into their own Chapter, NRS 125C. It is clear from the language of the provisions of NRS 125C, that the legislature intended the court would continue to determine all questions of law and fact arising in child custody proceedings; nowhere in the chapter is the 'trier of fact' referenced it is always 'the court.' Consequently, there are no jury trials of family court actions in Nevada.

Even if a jury trial were permitted, the demand was late. NRCP 38 provides a demand for jury trial must be filed and served "not later than the time of the entry of the order first setting the case for trial." Here, the Court set this case for trial in the Case Management Order filed on January 30, 2019. By not filing and serving his demand for jury trial before this date, Appellant waived any right to trial by jury, even if one existed. *Kohlsaat v. Kohlsaat,* 62 Nev. 485, 487-88, 155 P.2d 474, 475 (1945).

ISSUE 33. Phillips never got an opportunity to take Korpak's deposition. Here again, Appellant cites no law in support of his argument. He also glosses over the factual history of his tortured quest to take Respondent's deposition despite having failed to timely notice it during the course of discovery. V6, p 1237. The relevant facts are set forth at length in Plaintiff's December 18, 2019 Opposition to Defendant's Motion to Continue Trial Until After Plaintiff's Deposition. *Id*. at V6-7, pp 1232-1248. *See also* Plaintiff's Appendix of Exhibits in Support of Motion, V6, pp 1249-1265; *see also* Court's Order filed Feb. 11, 2020, V8, pp 1506-1507.

ISSUE 34. Did the Court commit fraud by concluding Phillips (supposedly) threatened to shoot up his sons school? Having electronically searched the December 19, 2020 Decision and Order, Respondent cannot find where the court made this conclusion, nor does Appellant cite to such a conclusion.

V12, pp 2434-2501. Appellant goes on under this issue to quote the court's paraphrase of Respondent's testimony, which Appellant argues is 'fraudulent testimony.' He makes the argument by reference to records that were neither offered nor admitted into evidence at the custody trial; they were only admitted at the EPO trial in the T-case. Because these records were not in evidence, that presumably ends the inquiry for the appellate court; however, Respondent will add that Appellant's interpretation of these records is facially inaccurate and there is no fraud. This is supported by a document that is in the record. At trial the parties stipulated to admit records from the child's school that were obtained by Respondent with a custodian of records affidavit. V11-12, pp 2236-2355. Those records recite what Respondent told the school and it was not that Appellant threatened to shoot up the school but that he "threatened to shoot her and Donovan..." Id. at 2271. Finally in this section, it is not clear what, if any, error is alleged but Appellant is apoplectic over counsel's use of the word 'threats' in relation to him. The court will read for itself throughout the record on appeal the myriad threats that Appellant makes, express and implied, written and verbal to anyone and everyone who does not capitulate to his demands. Yes, many of them are litigation threats, but even those go beyond mere threats to sue. See e.g., V3, p 759; V4, pp 679, 689, 693; V11, p 2240. There are other threats too, particularly where Respondent is concerned. For example, "Do you know I have a gun? How

do you feel about that?" is not a litigation threat. V12 at 2446. Clearly, the son's school felt threatened by Mr. Phillips's words and behavior when it sent an email to all staff describing a protocol for interacting with him. V11, pp 2275.

ISSUE 35. "Who" Made the Allegation that PHILLIPS "May" Shoot-Up the School? See Response No. 34, above.

ISSUE 36. The Court Must Excise the False Allegations from the Order Appellant cites no law for the proposition even if there were false allegations in the order, which there are not. See Response No 34, above.

ISSUE 37. Statue of Limitations Appellant cites no law. He argues, the statute of limitations on domestic violence expires after one year. Presumably he is speaking about a limitation on a criminal statute. As explained *ad nauseum* above, no criminal statute was employed in this case. There are no statutes of limitations to apply in decisions made pursuant to NRS 125C.0035(6) or NRS 125C.230.

ISSUE 38. Kidnaping Appellant cites no law in support of his allegation that Respondent kidnaped the child. He alleges Respondent kidnaped the child when she left the house on September 16, 2018, because he argues she did not make allegations of domestic violence to the police officers who she called to assist her and the minor child in making their exit from the marital residence. Kidnaping is defined in NRS 200.310, and child abduction is defined in NRS 125D.030 ("the

wrongful removal or wrongful retention of a child."). It is neither kidnaping nor child abduction when a mother calls the police to assist her and the minor child to leave the marital home over the father, which is what happened here. *See e.g.*, V12, pp 2437 at ¶11, 2439 at ¶17, 2448-2449 at ¶¶47-49, 2471 at lines 15:19. Appellant is a lawyer, licensed to practice law in California for approximately thirty (30) years, surely he knows this, and this is yet one more of dozens of examples of Appellant's unreasonable penchant to bring and maintain claims without reasonable grounds and to harass, not only the Appellant, but also her counsel, and the courts in the hope that we will all tire of his abusive litigation tactics and allow him to have his way.

7. Legal argument, including authorities. See above, these were incorporated.

Respectfully submitted this 31st day of August, 2021.

HUTCHISON & STEFFEN, PLLC

/s/ Shannon R. Wilson

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VERIFICATION

1. I hereby certify that this fast track response 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 fast track response has been prepared in a proportionally spaced typeface using Word in 14 point Times New Roman font.

2. I further certify that this fast track response complies with this Court's order filed August 20, 2021 granting leave for Respondent to file an expanded fast track statement; however, Respondent did exceed the requested page limit by one page. If the Court requires further motion to correct this, Respondent's counsel is happy to oblige.

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3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track response and that the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track response. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information, and belief.

Respectfully submitted this 31st day of August, 2021.

HUTCHISON & STEFFEN, PLLC

/s/ Shannon R. Wilson

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CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **CHILD CUSTODY FAST TRACK RESPONSE** was filed electronically with the Clerk of the Nevada Supreme Court, and a copy was mailed via U.S. mail to the attorneys/parties below:

T. Matthew Phillips
4894 W. Lone Mountain Rd., No. 132
Las Vegas, NV 89130

tmatthewphillips@aol.com

Appellant in Proper Person

DATED this 1st day of September, 2021.

/s/ Alex Owens
An employee of Hutchison & Steffen, PLLC