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**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: 578142

**RESPONDANT AMBER  
PHILLIPS'S OPPOSITION TO  
APPELLANT TODD MATTHEW  
PHILLIPS' EMERGENCY  
MOTION TO STAY DISTRICT  
COURT ORDERS**

Respondent Amber Phillips n/k/a Amber Korpak (hereinafter, "Amber"), through her counsel of record Shannon R. Wilson of Hutchison & Steffen, PLLC, acting in a *pro bono* capacity in conjunction with the Legal Aid Center of Southern Nevada, files her opposition to Appellant Todd Matthew Phillips (hereinafter, "Phillips") Emergency Motion to Stay District Court Orders (hereinafter, "Motion") and asks the Court to *deny* Phillips's Motion. A version of this same motion was filed in an original proceeding filed by Phillips on March 21, 2022, Case No. 84411, which this court denied on April 6, 2022. A few days after this Court denied

Phillips's original proceeding, he re-styled and filed essentially the same motion in the instant case. For the reasons set forth below, Phillips's motion should be denied.

### **PROCEDURAL HISTORY**

This is a divorce and child custody action. Amber filed a complaint for divorce on October 5, 2018. Phillips filed an answer on December 7, 2018. The parties resolved the division of assets and debts, alimony, and child support by stipulation entered on September 27, 2019. Child custody was bifurcated.

The parties share one minor child, a son, born November 8, 2005, currently age 16. Following trial on December 20, 2019 and October 19, 2020, the district court entered a Decision and Order on December 19, 2020 (hereinafter, "D&O"). The D&O granted Amber sole legal and primary physical custody. (D&O at 66: 9-18.) The D&O further provided that Phillips could engage in reunification therapy with the minor child if he chose, and it also permitted Phillips to call the minor child on Wednesdays and Sundays at 6:30 p.m. and the minor child to freely call his dad. (*Id.* at 66:20-67:3.)

Phillips filed a timely notice of appeal on January 17, 2021, and a complete procedural history is set forth in Amber's Child Custody Fast Track Response filed September 1, 2021 (hereinafter, "Response"). Briefing in this case was complete on

September 30, 2021, and a decision is pending. Indeed, the main issue raised in Phillips's Motion is also raised in the pending appeal.

In addition to filing a version of this Motion in Case No. 84411, Phillips filed the present motion twice in the instant case, once on April 13, 2022, and again on April 15, 2022.<sup>1</sup> The main issue raised is a specious claim that a district court judge lacks subject matter jurisdiction to make findings that a party in a child custody proceeding has engaged in acts constituting domestic violence.

The relief Phillips seeks by way of his Motion is to stay the child custody order or find it is a void order. This relief should be denied because it is nothing more than a fatuous attempt to circumvent the orders the district court made to ensure the best interests of the minor child. Prior to entry of the D&O, the district court ordered *inter alia* that the minor child would enroll in individual therapy for therapeutic purposes, that he would have teenage discretion as to visitation with Phillips, and that father and son would enroll in reunification therapy. (Order filed Feb. 11, 2019 at 2:9-16.) The child was enrolled in and participated in several sessions of individual therapy, but he never requested to see his dad. When Phillips

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<sup>1</sup> On April 15, 2022, Mr. Phillips sent the undersigned an email explaining the difference between his motion filed April 13, 2022, and the one he filed on April 15, 2022, which stated, "They have different 'end dates' for relief sought. In addition, the April 15<sup>th</sup> version is shorter. The only difference between the two is page 11. The April 15<sup>th</sup> version cuts express lines from page 11."

made clear that he would not enroll in reunification therapy, the district court ordered that Phillips could have visitation at Donna's House. (Order filed June 11, 2019 at 2:3-4) Phillips made clear he would not see his son at Donna's House either. The D&O again provided Phillips could enroll in reunification therapy, but again, Phillips declined. So, the Court can see, what Phillips is really about, is not what is best for his son or even *actually* seeing his son, because if it was, then he would have swallowed his pride or his principles or whatever it is that motivates him on his vexatious quest, and he could have seen his son *more than three years ago*.

## **LEGAL ARGUMENT**

Phillips's Motion is premised on the argument that he was "tried" for a "crime," and that this was done without an indictment; therefore, his argument goes, the district court violated the Nevada Constitution. (App. Mot. filed Apr. 15, 2022 at 6:24-28.) Similarly, Phillips's Amended Fast Track Statement filed July 12, 2021, in the section titled "Legal Issues and Argument" at p. 3, sets forth the following issues:

- Do family court judges have jurisdiction to issue "permanent" custody orders based on D.V. findings?
- Can a family court judge make a finding of "domestic violence?"
- Are family court judges competent to make findings that parents committed "crimes?"

Phillips did not number the issues in his Fast Track Statement of which there were thirty-eight. For ease of reference, Amber's Response did number Phillips's issues, and these were addressed in her Response as issues 11, 12, and 13. *See* on file in case no. 82414 Resp. filed Sept. 1, 2021 at pp. 14-16. The answer to these questions is set forth in greater detail in Amber's Response. The short answers are as follows:

- Yes, family court judges do have jurisdiction to issue permanent custody orders based on findings of domestic violence. 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).
- Yes, family court judges can make findings of domestic violence, indeed they are required to do so by NRS Chapter 125C.
- Yes, family court judges are competent to make findings that parents committed crimes because they have the same constitutional power and authority as any district court judge, although that is not what happened here. Here, the Court made findings by clear and convincing evidence as required by *inter alia* NRS 125C.003(1)(c) and NRS 125.0035(5) as set forth in the D&O at pages 34-45.

Phillips's Motion should be denied because the issues raised have no basis in fact or law. Phillips was not tried or convicted of a crime; therefore, there is no constitutional violation as he argues. NRS 125C.230(1) provides that a rebuttable presumption is created that it is not in the best interest of the child to order sole or

joint physical custody with a parent who has engaged in one or more acts constituting domestic violence. NRS 125C.230 goes on to state that the finding that a parent has engaged in one more acts of domestic violence must be made after an evidentiary hearing, by clear and convincing evidence, and the findings must be set forth in the Court's order along with findings that the ordered custodial and visitation arrangement adequately protects the child and the parent or other victim of domestic violence. Finally, NRS 125C.230(3) states, "As used in this section, "domestic violence" means the commission of any act described in NRS 33.018." NRS 33.018 in turn contains a non-exclusive list of acts that constitute domestic violence, including but not limited to, coercion pursuant to NRS 207.190.

The D&O referenced the foregoing statutes together with specific acts in which it found Phillips engaged during his marriage and cohabitation with Amber and their son. (D&O at 34:3 – 44:25.) And, in accordance with these findings the district court made its order that Amber would have sole legal and primary physical custody, and Phillips could engage in reunification therapy with his son. (*Id.* at 66:9-67:4) Nothing in the statute or the D&O violates the Nevada Constitution as Phillips argues because he was neither tried nor convicted of a crime, and importantly, the findings of the district court cannot be bootstrapped to a criminal conviction, consequently, Phillips arguments are without reason or merit.

At every turn, Phillips was given notice, opportunity be heard, and a fair hearing by an impartial jurist who, frankly, went so far out of his way to accommodate Phillips, his allegations against Judge Ochoa are laughable. The bottom line of this case is that not one, but two, district court judges observed it was in the best interest of the minor child for Phillips to have visitation through Donna's House and/or reunification therapy. Mr. Phillips was given both of those options, repeatedly, and he repeatedly declined those opportunities.

### **CONCLUSION**

For the reasons set forth above, Respondent Amber Phillips nka Amber Korpak, respectfully requests this Honorable Court deny Appellant Todd Matthew Phillips's Motion to Stay District Court Orders Pursuant to NRAP 27(e).

Respectfully submitted this 21<sup>st</sup> day of April, 2022.

HUTCHISON & STEFFEN, PLLC

*/s/ Shannon R. Wilson*

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*Attorney for Real Party in Interest  
Amber Korpak*

## **CERTIFICATE OF SERVICE**

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **RESPONDANT AMBER PHILLIPS'S OPPOSITION TO APPELLANT TODD MATTHEW PHILLIPS' EMERGENCY MOTION TO STAY DISTRICT COURT ORDERS** was filed electronically with the Clerk of the Nevada Supreme Court and served via U.S. first class mail to the attorneys/parties below:

MR. TODD MATTHEW PHILLIPS  
4894 W. Lone Mountain Rd., No. 132  
Las Vegas, NV 89130  
*Appellant in proper person*

DATED this 21<sup>st</sup> day of April, 2022.

*/s/ Aurora Moore*

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An employee of Hutchison & Steffen, PLLC