IN THE SUPREME COURT OF THE STATE OF NEVADA

LYUDMYLA ABID,

Appellant,

vs.

SEAN ABID,

Respondent.

S.C. DOCKET NO.: 82781
District Court Case No. D-10-424830-Z

CHILD CUSTODY FAST TRACK RESPONSE

1. **Name of party filing this fast track response**: Sean R. Abid.

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

John D. Jones, Esq., Bar No. 006699
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9950 W. Flamingo Road, #100
Las Vegas, Nevada 89147
Telephone: 702-318-5060

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**:

N/A

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)**:

This Court is already aware of the prior appellate history of this case. (See *Abid v. Abid* 133 Nev 153, 2017) The instant appeal was filed by Appellant after

the district Court, without setting an evidentiary hearing, denied her second motion to change custody based upon the fact that there was not adequate cause to reopen the issue of child custody. The most recent motion to change custody alleged similar facts to her prior motion to change custody none of which amounted to a significant change of circumstances materially affecting the welfare of the child. As such, like her other baseless motion, it was denied.

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):

Unhappy with this Court's 2017 decision affirming the District Court decision changing custody from Joint Physical to Primary Physical Custody to Respondent, Appellant waited less than two years to try to undo what occurred at the District Court trial and this Court's affirmance thereof. In fact, a large portion of Appellant's most recent fast track statement (like the one she filed in Appeal # 80933) discusses her many complaints regarding both the District Court and this Court's decisions from 2016 and 2017, respectively. In her latest motion to change custody (from which this appeal was taken), which was properly denied by the District Court, Appellant set forth the following as the bases of her motion:

1. The contents of the FMC child interview conducted by District Court judge Vincent Ochoa in February of 2020.
2. The wishes of the child.

Appellant, to some degree also characterized he most recent motion to change custody as a motion to alter or amend the findings of the District Court related to her prior motion to change custody which were entered on November 2nd, 2020. In that motion, Appellant alleged the following as her purported basis to change custody:

1. Respondent allegedly scheduled activities on Appellant's custodial time.
2. Respondent allegedly refused to allow Appellant to take Sasha to her work on a school day. (There was no order permitting Appellant to have custody during Respondent's custodial time for "take your child to work day)
3. Respondent allegedly refused to allow Sasha to wear a cell phone watch in his home. (There was no order that permitted such a device or that required either parent to allow such a device in their home)
4. Respondent allegedly denied phone contact between Sasha and Appellant during his 2018 summer vacation.
5. Respondent allegedly does not allow child privacy in his home for Sasha to contact Appellant and allegedly placed a recording device under Sasha's bed. (There was no evidence of this allegation)
6. Respondent allegedly instructs Sasha not to tell Appellant what occurs

in his house. (There was no evidence of this allegation)

7. Respondent allegedly did not allow the Sasha to go to the airport for his sister's arrival from Russia during Respondent's custodial time. (There was no Court order granting Appellant custody time during Respondent's timeshare for this "event")

8. Respondent is allegedly trying to alienate Appellant. (There has never been any evidence of alienation on the part of Respondent. There has been overwhelming evidence of Appellant's alienating behaviors. It is believed that Appellant made this argument because it "worked" for respondent)

9. Respondent was allegedly emotionally unavailable to support the relationship between Appellant and Sasha. (There was no evidence of this)

10. Sasha is allegedly not properly cared for while in Respondent's care. (There was no evidence of this)

11. Sasha is allegedly required to care for his brothers. (There was no evidence of this)

12. Respondent allegedly exposed Sasha to videos of Court proceedings by posting them on the internet. (There was no evidence of this)

13. Respondent allegedly read Sasha part of Appellant's husband's

sentencing report for his multiple felony criminal conviction for which he was sentenced to 10 years in prison. (There was no evidence of this)

14. That there was newly discovered evidence regarding the 2016 District Court proceedings. (This was a false statement to the Court. Appellant had reviewed her own "hired gun" expert's interview report prior to the start of trial and chose, because of the similarity of her own expert's report to the findings of Dr. Holland. Chose not to call her own expert as a witness)

15. Respondent allegedly refuses to co-parent with Appellant. There was no evidence of this)

16. Respondent allegedly needed his moral boundaries evaluated. (There was no evidence of this)

Basically, the prior motion filed by Appellant was the "sling as many unsupported allegations against the wall and hope that some of it sticks" type of motion which is the blight of Family Court. The Opposition thereto not only disproved Appellant's allegations, but also established that in reality, Appellant continues to try to relitigate the 2016 trial. Respondent incorporates herein by reference his Fast Track response filed on August 3, 2020 in S.C. No.: 80933.

All of Appellant's allegations, since the affirmance of this Court of the

original order changing custody (See *Abid v. Abid* 133 Nev 153, 2017) even if true, would not have risen to the level of reopening the issue of child custody. At best, if any of the allegations were true, the Court would have issued admonitions, not orders changing custody.

The District Court, in the order from which the current appeal was taken, made the following findings:

> The Court taking these matters under advisement does not constitute a custody changing event, sufficient to modify physical custody under Nevada law, and it appears that Defendant is seeking to again relitigate prior issues. (p. 4, ll. 6-9)
>
> . . . that specific findings of fact regarding findings from a child interview need not be included in a final order under the standards set forth in *Rooney* or *Ellis*. (VR 9:59:45-10:01:17)
>
> **THE COURT FURTHER FINDS** that, a 12-year-old is too young here in consideration of the totality of the circumstances, to give any weight to the child's preferences with respect to physical custody under NRS 125C.0035(4)(a). (VR 10:01:25-10:03:05). (p. 4, ll. 12-20)

Consistent with these findings, Appellant's current Fast Track Statements contain multiple references to matters which were fully adjudicated prior to and during Appellant's first appeal from which the above referenced opinion issued. (See *Abid v. Abid* 133 Nev 153, 2017). It is important to note that Appellant's version of "evidence" of which she alleged the District Court ignored, were primarily her baseless allegations.

The procedural and factual allegations made by Appellant are so twisted and

distorted from the actual record in this case, that is hard for Respondent, particularly given the page limitations, to know where to begin. Basically, all of the allegations made by Appellant in both of her District Court motions to change custody were refuted by Respondent's responsive pleadings. (See ROA 3370, 3583. 3950, and 3961) More importantly, the District Court was within its discretion to weigh Appellant's unsupported allegations against the history of her own horrible acts contrary to the best interests of the child for which custody was changed in the first place. Appellant's complaints (like the child playing basketball undermining her relationship) are often about Court orders, not about Respondent.

Probably the most offensive of the repeated misrepresentations and distortions of fact is the allegation that the undersigned counsel and her former counsel, Radford J. Smith Esq. "conspired' to preclude her expert from testifying at trial To compound this fabrication, Appellant violates EDCR 5.304 which precludes the inclusion of any type of confidential report, or any portion thereof in a filed pleading.

Again, Appellant attempts to argue contrary to the findings of the District Court in 2016 and the decision of this Court rendered in 2017. As the District Court found in its most recent order (referenced above) Appellant is trying to relitigate the trial which occurred five years ago.

As it pertains to the most recent FMC child interview, Appellant misstates

the purpose of the interview and the record. The District Court judge at the time (Judge Vincent Ochoa) had the interview performed, and attended the interview himself, to confirm that Appellant's allegations of a child being in distress were either true or false. After witnessing the interview, the District Court closed the case.

6. Appellant's Issues on appeal. State concisely your response to the principal issue(s) in this appeal:

1. The District Court appropriately applied the *Rooney* Standard in declining to hold an evidentiary hearing.

This Court in Rooney held as follows:

> Nevada statutes and case law provide district courts with broad discretion concerning child custody matters. *See generally* NRS 125.510; *Culbertson v. Culbertson,* 91 Nev. 230, 533 P.2d 768 (1975) (it is presumed that a trial court has properly exercised its judicial discretion in determining the best interests of a child); *Paine v. Paine,* 71 Nev. 262, 287 P.2d 716 (1955) (a district court has the discretion to act when the matter before it concerns the interests or welfare of children). Given such discretion in this area, we hereby adopt an "adequate cause" standard. That is, we hold that a district court has the discretion to deny a motion to modify custody without holding a hearing unless the moving party demonstrates "adequate cause" for holding a hearing. *See *543 Pridgeon v. Superior Court,* 134 Ariz. 177, 655 P.2d 1 (1982) (court shall deny a motion to modify custody unless it finds that the pleadings establish **125 adequate cause for hearing the motion); *Betzer v. Betzer,* 749 S.W.2d 694 (Ky.Ct.App.1988) (if the trial court determines that the affidavits fail to establish adequate cause for a hearing, the motion for modification of custody shall be denied without a hearing); *Lutzi v. Lutzi,* 485 N.W.2d 311 (Minn.Ct.App.1992) (court did not wrongfully deny an evidentiary hearing on a proposal to modify custody where the moving party failed to demonstrate a prima facie case for the modification); *Roorda v. Roorda,* 25 Wash.App. 849, 611 P.2d 794 (1980) (court shall deny a motion to modify custody unless the affidavits establish adequate cause for hearing the motion). "Adequate cause" requires

> something more than allegations which, if proven, might permit inferences sufficient to establish grounds for a custody change. *Roorda v. Roorda,* 25 Wash.App. 849, 611 P.2d 794, 796 (1980). "Adequate cause" arises where the moving party presents a prima facie case for modification. To constitute a prima facie case it must be shown that: (1) the facts alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not merely cumulative or impeaching. *Roorda,* 611 P.2d at 796.

Rooney v. Rooney, 109 Nev. 540, 542–43, 853 P.2d 123, 124–25 (1993)

Nothing in the more recent line of custody cases decided by this Court has overruled *Rooney v. Rooney* (105 Nevada 540, 1993) or deprived the District Courts of its discretion to determine if the allegations and evidence presented in a custody motion rise to the level of requiring an evidentiary hearing. What Appellant does not seem to understand is that a District Court judge not agreeing with her assessment of things is not an abuse of discretion or error of law.

In this case, it cannot be ignored that based upon the findings of the District Court following the 2016 trial, that any affidavit offered by Appellant herself (or the entirety of the pleading since she was in proper person) should be viewed with skepticism based upon her lack of credibility. Moreover, the only evidence that was offered to meet the Rooney standard was either disproven, or merely a rehashing of those allegations already disposed of at the 2016 trial and by this Court in its unanimous en banc decision affirming the District Court's order.

Most of the allegations made in the two motions to change custody have been made by Appellant for years. There was no substantial change of

circumstances affecting the welfare of the child. At the time of Appellants District Court motions, Sasha was excelling in school and very happy. There was absolutely no evidence of any manifestation in the child of any change of circumstances.

As it pertains to the "best interests" prong of any change of custody analysis, the record in this case and the ample findings of the District Court which were unanimously affirmed by this Court establish that it is and likely never will be in the minor child's best interests for Appellant to have joint physical custody.

2. The District Court did not abuse its discretion in not making findings as a result of the FMC interview.

Most of Appellant's assignments of error by the district Court deal with issues addressed in the initial appeal. Moreover, the law of the case is that Appellant has, in fact, alienated the minor child and coached him for interviews as to what to say. There is no doubt in Respondent's mind, that based upon Appellant's programming, no matter how happy Sasha is (very), or how well he does in school(excelling under Respondent's supervision Monday through Friday), that until Sasha is 18 years of age, he will tell anyone who asks that he would prefer to live with both parents equally. This is programming that, unfortunately, can never be undone. This is why the Court refusing to make a finding about what Sasha said in the interview could never be an abuse of discretion.

3. There is no issue of first impression related to new evidence.

Appellant's arguments regarding "newly discovered" evidence are completely false and without merit. Not only are these allegations untimely as it pertains to the decision from the District Court following trial and this Court's affirmance thereof, they mischaracterize the record in this case. In this case, the parties stipulated to use Dr. Holland to conduct the forensic child interview. Any objections to the manner in which the interview was conducted are long past waived as they were not raised at either the trial or on appeal. In fact, the allegations about the impropriety of the provision of recordings to Dr. Holland was absolutely argued on appeal and disregarded by this Court.

7. Legal argument, including authorities:

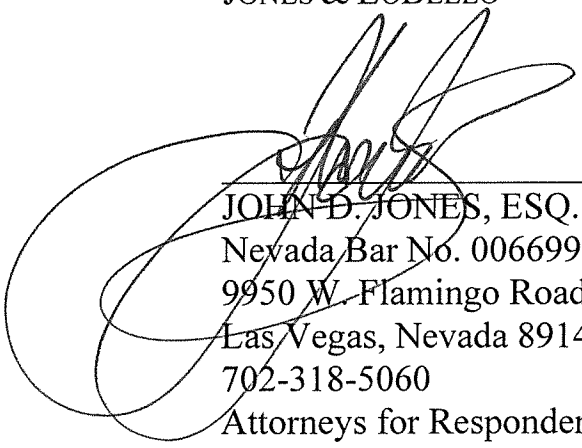
See argument following each issue set forth above.

CONCLUSION.

The contents of the instant Fast Track statement filed by Appellant are outrageous. Not only has she falsely accused the undersigned counsel and her own counsel of unethical and criminal behavior, without evidence, she has cited to and argued items outside of the record upon which this Court could reasonably rely. While Respondent and his counsel recognize that she is in proper person, the only way that Appellant's bad faith behavior in the District Court's and Appellate Courts will cease is if the appropriate orders, including sanctions, issue as a result of this appeal.

RESPECTFULLY SUBMITTED this 23rd day of August, 2021.

JONES & LOBELLO



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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 Microsoft Word 2016 in 14 point, Time New Roman font; or

[ ] This fast track response has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

2. I further certify that this fast track response complies with the page- or type-volume limitations of NRAP 3E(e)(2) because it is either:

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains ___ words or ___ lines of text; or

[X] Does not exceed 11 pages.

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 23rd day of August, 2021.

JONES & LOBELLO

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PROOF OF SERVICE

I, Cheryl Berdahl, declare:

I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed at Jones & LoBello, 10777 West Twain Avenue, Las Vegas, Nevada 89147. I am readily familiar with Jones & LoBello's practice for collection and processing of documents for delivery by way of the service indicated below.

On August 23, 2021, I served the following document:

RESPONDENT'S CHILD CUSTODY FAST TRACK RESPONSE

On the interested party(ies) in this action as follows:

Lyudmyla A. Abid, nka
Lyudmyla A. Pynkovska
2167 Montana Pine Drive
Henderson, Nevada 89052
702-208-0633
Appellant in Proper Person

By Mail. By placing said document in an envelope or package for collection and mailing, addressed to the person(s) at the address(es) listed above, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing of mail. Under that practice, on the same date that mail is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

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

Executed on August 23, 2021, at Las Vegas, Nevada.

Cheryl Berdahl