IN THE SUPREME COURT OF THE STATE OF NEVADA

LYUDMYLA A. ABID, A/K/A LYUDMYLA PYANKOVSKA, Appellant, vs. SEAN R. ABID, Respondent.	S.C. Appeal No.: 82781 FILED D.C. No.: D-10-424930-Z SEP 01 2021 Dept. No.: T ELIZABETH A. BROWN CLERK OF SUPREME COURT BY DEPUTY CLERK

REPLY TO FAST TRACK RESPONSE.

Parties were exercising physical custody with Dad awarded primary following the date of entry of March 1, 2016 order.**(ROA1244-1253)** Mother waited **3.5 years before** she moved to modify physical custody when she filed her Motion September 2, 2019, **(ROA 3120-3163)** *NOT less than two years* as respondent alleges. Other jurisdictions require a **two-year period** before a party can move to modify primary physical custody. For example, in North Dakota statute N.D.C.C. § 14-09-06.6(6)[1], provides:

"The court may modify the primary residential responsibility **after the two-year period following the date of entry of an order establishing primary** residential responsibility if the court finds:
a. On the basis of facts that have arisen since the prior order **or which were unknown to the court at the time of the prior order,** a material change has occurred in the circumstances of the child or the parties; and
b. The modification is necessary to serve the best interests of the child."

[1] Nevada has identical standard as North Dakota as it was argued by Appellant in her Fast Track statement that *Ellis* only expanded the *Murphy* standard and *did not* override it.

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Our Nevada legislature does not address a waiting period, however, this court have addressed this issue in *Rooney v. Rooney*, 109 Nev. 540, 543 n.4 (Nev. 1993). The mother moved to modify physical custody less than two months after an order awarding the father primary. This court adopted the "adequate cause" standard from the Divorce Act[2] for two important judicial goals "(1) "discourag[ing] contests over temporary custody"; and (2) "prevent[ing] repeated or insubstantial motions for modification." *Rooney* **does not apply to the instant case** because mom waited more than 3.5 years before she moved to modify custody. Nevada does not give clear guidance as to how lower courts must weigh evidence to reach conclusion that moving party's evidence *is sufficient or insufficient prima facie case for change of custody.* Other courts defined it very clear and simple, *See Grigg v. Grigg*, 869 N.W.2d 411, 416 (N.D. 2015):

"We have made it clear that district courts are prohibited from weighing conflicts in the evidence presented in competing affidavits to reach the conclusion that the moving party's evidence is insufficient to establish a prima facie case for modification of residential responsibility. *See Anderson v. Jenkins*, 2013 ND 167, ¶ 14, 837 N.W.2d 374; *Charvat v. Charvat*, 2013 ND 145, ¶ 15, 835 N.W.2d 846;

[2] 9A Uniform Laws Ann., Uniform Marriage and Divorce Act § 410 commentary at 668 (1987) The Uniform Marriage and Divorce Act provides: "No motion to modify a custody decree may be made earlier than two (2) years after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may endanger seriously his physical, mental, moral or emotional health." Section 48-339(1), R.C.M. 1947

Jensen, 2013 ND 144, ¶¶ 12, 14, 835 N.W.2d 819. Instead, when a moving party's allegations are supported by competent, admissible evidence, courts must "accept the truth of the moving party's allegations and may conclude the moving party failed to establish a prima facie case *only if* the opposing party's counter-affidavits 'conclusively establish that the moving party's allegations have no credibility' or the moving party's allegations are 'insufficient on their face' to justify a modification, even if uncontradicted." *Anderson*, at ¶ 12 (quoting *Jensen*, at ¶ 13) (emphasis added). "

Here respondent is attempting to confuse this court by alleging that appellants' 100 pages of Exhibits**(ROA3166-3277)** fully supporting her allegations presented to the lower court on September 2 2019, are no longer before this appeal. Honorable Nadine Cutter disagreed and clearly explained that Appellant's objection is a tolling motion to order from the November 20, 2019 hearing entered by court one year later on November 3, 2020**(ROA3934-3937)**. See transcripts from **February 26, 2021 page 38 line 6-13** stating:

> COURT: "Mom now comes before this Court, which has been newly assigned this case, and asks that the findings be amended pursuant to NRCP 59(E). The Court does not agree with Mr. Jones's argument that the motion was not timely, and that it was not a motion. Mom clearly stated it was an objection to an order, and she called it a motion to reconsider. So the Court finds that it is timely, pursuant to NRCP 59(E) because she filed it within two days of the order.

It should be alarming that respondent is silent regarding his social media attacks against mom and her family **that occurred for three solid years after** he was awarded primary physical custody. Such behavior alone demonstrates Respondent will never foster any relations between Mom and Sasha. This case should be a first impression in Nevada regarding behavior of parents on social

media. Mom's allegations alone are basis to grant an evidentiary hearing and a forensic child interview instead of FMC child interview. *See Tank v. Tank,*2004 ND 15, ¶ 21, 673 N.W.2d 622 ("Allegations, supported by affidavit, demonstrating a custodial environment that may be endangering the children's physical or mental health, are sufficient to raise a prima facie case for change of custody...."); *Schroeder v. Schroeder,*2014 ND 106, ¶ 14, 846 N.W.2d 716 ("[A]llegations of parental frustration of parenting time may be a basis to grant an evidentiary hearing.").

In other jurisdictions it is normal practice for a court to review evidence that was not available during previous proceedings that could undermine the court's prior ruling (see above North Dakota statute). MOM is well within her rights to ask court to review Dr. Chamber's report and the child's audio recorded statements which were unknown to the court and Appellant at the time of the prior order. Attorney Radford Smith failed to perform his fiduciary duty and obligation when he denied Appellant an opportunity to defend herself and rebut Dr. Holland's allegations by failing to present Dr. Chambers findings to the court. Appellant testified on January 11, 2016 that she never saw or reviewed Dr. Chambers' report **(ROA1785 Ln 18):**

JONES: And you've read Dr. Holland's report right?
MOM : Yes, I did
JONES: And you've read Dr. Chambers' report?

MOM: Unfortunately, no. I did not have a chance.

Lastly, Appellant provided the lower court with evidence of collusion between the attorneys when she provided the court with Jones's proposed settlement dated September 2, 2015**(ROA3999-4000).** It is absurd that Jones during litigation accused Mom of severe parenting alienation and pathogenic parenting, while at the same time, behind the scenes he was offered mom a settlement to continue joint physical custody, as follows:

"(1) The parties will maintain joint physical custody.(6) All references to the recordings contained in Dr. Holland's report shall be redacted. (11) The recordings at issue and any references to them in the record shall be stricken as if they never existed. (12) Neither Lyuda nor any members of her household shall not pursue any criminal charges against Sean. (13) Lyuda shall pay to Sean the sum of $5000, 00 as and for attorney fees and costs related to this litigation. Please understand that these terms are firm. This is not a point from which to begin negotiations. Sean will consider any additional terms you suggest but cannot deviate from the core terms above as the basis of the settlement. Time is of the essence" **(ROA3999-4000)**

Mr. Jones' actions in this case is a mockery of judicial proceedings and it is questionable as to why Radford Smith failed to report his behavior to the proper authorities, in according with Nevada Rules of Professional Conduct **Rule 8.3**. See *Leach v. Byram*, 68 F. Supp. 2d 1072, 1075 (D. Minn. 1999).

The lower court erred when it denied Appellant an evidentiary hearing as she met prima facie case for change of custody. Respectfully submitted this 30 day of August, 2021.

Lyudmyla Ryabokon

Appellant in proper person

CERTIFICATE OF SERVICE

I certify that on the 30 day of August, 2021, I served a copy of this **REPLY TO FAST TRACK RESPONSE** upon all counsel of record by mailing it by first class mail with sufficient postage prepaid to the following address:

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