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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3
4 ANTHONY JACOB MONAHAN,)

5 Appellant,)

6 vs.)

7 AMANDA KAITLYN HOGAN fka)
8 AMANDA KAITLYN KING,)

9 Respondent.)
10)

No. 82031

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12 **APPELLANT'S APPENDIX – VOLUME 1**

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21 Pursuant to NRS 239B.030, this document does not contain the social security number of any person.
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1.	March 1, 2019 Order	3/1/2109	AM001 - AM010
2.	November 20, 2019 Order	11/20/2019	AM011 - AM016
3.	September 15, 2020 Order	9/15/2020	AM017 - AM024
4.	Partial Transcript from September 15, 2020 Hearing		AM025 - AM040

Exhibit - 1 -

Exhibit - 1 –

Case No.: 15-CV-00418

Dept. No.: II

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TANYA SCHEPANE
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.

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

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

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

9 NRS 125C.007 states:

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

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

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

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

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

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

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

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

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

35 (e) Whether there will be a realistic opportunity for the non-relocating parent
36 to maintain a visitation schedule that will adequately foster and preserve the
37 parental relationship between the child and the non-relocating parent if permission
38 to relocate is granted; and

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

41 3. A parent who desires to relocate with a child pursuant to NRS
42 125C.006 or 125C.0065 has the burden of proving that relocating with the child is
43 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 20th day of February, 2019.

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23 Hon. LEON ABERASTURI
24 DISTRICT JUDGE
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Johnston Law Offices, P.C.
LeAnn Schumann, Esq.
Deposited in the TJDC mailbox

DATED: This 1st day of March, 2019.

Richard C. C. C.

Exhibit - 2 -

Exhibit - 2 –

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.

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TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Toran DEPUTY

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

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11 ANTHONY JACOB MONAHAN,
12 Plaintiff,

13 vs.

CUSTODIAL ORDER

14 AMANDA KAITLYN HOGAN fka
15 AMANDA KAITLYN KING,
16 Defendant.

17 The parties appeared before the Court on November 18, 2019 for a hearing to
18 determine a visitation schedule for the minor child: Molokai Jaco Monahan, born July 18,
19 2012. Plaintiff, Anthony Jacob Monahan, was present with counsel, Aaron Bushur, Esq.;
20 defendant, Amanda Hogan was present with counsel, Roderic A. Carucci, Esq. With the
21 assistance of the Court the parties were able to reach an amicable resolution of the
22 remaining issues in this matter and placed their settlement on the record. The parties
23 were duly canvassed and affirmed their agreement as being freely and knowingly entered,
24 and that the agreement is in the best interest of Molokai.

25 Procedural History

26 Prior to reciting the stipulation of the parties, a review of the procedural history
27 bringing the parties and the Court to this juncture is appropriate, as this is a final order.
28 The parties were never married. The parties have one minor child the issue of their

1 relationship: Malakai Jaco Monahan, born July 18, 2012. Nevada is the home state and
2 habitual residence of the minor child. The Court's most recent custodial Order was
3 entered on March 1, 2019, after a hearing held on December 27, 2018.

4 Mother filed her motion to modify custody based upon the status quo as she
5 presented evidence that she had custody of the minor child for 73% of the time in the 9
6 months prior to filing her motion on August 29, 2018. As the parties resided 65 miles
7 apart, the relocation statutes were deemed inapplicable as Mother's move to Fallon from
8 Yerington was not "at such a distance that would substantially impair the ability of the
9 other parent to maintain a meaningful relationship with the child." NRS 125C.0065.
10 Father opposed Mother's motion.

11 At the conclusion of the evidentiary hearing on December 27, 2018, the Court
12 directed counsel for the parties to submit briefs on two issues: (1) the applicability of the
13 removal statute as the parties live slightly over an hour apart (65 miles); and (2) argument
14 regarding when a change in circumstance becomes applicable. The Court entered its
15 custodial Order on March 1, 2019, having disposed of the removal argument in two ways:
16 (1) finding that the removal statute was inapplicable in this case, and (2) in the
17 alternative, Mother met her burden for removal with the child to Fallon, Nevada.

18 The Court also concluded as a matter of law that "Mother had de facto primary
19 custody of the Child. The de facto custody agreement is in the best interests of the Child."
20 [Order, page 5, line1] "The Court also concludes that the Father was aware of the
21 Mother's relocation and gave implied consent to the relocation, although not in writing."
22 [Order, page 6, line 19]. The child is now enrolled in the second grade at E.C. Best
23 Elementary School in Fallon, Nevada.

24 "The Mother presented evidence that the relocation situs
25 will not substantially impair the ability of the Father to
26 maintain a meaningful relationship with the Child based upon
27 the de facto custody arrangement in place at the time of the
28 relocation. Father can exercise visitation as the relocation situs
is only one hour away from Yerington and three hours from
Winnemucca. The Court can fashion a new schedule that
provides for weekend and summer visitation." [Order, page 6,
line 24]

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

4 The Court then proceeded to analyze the custodial factors set forth in NRS
5 125C.0035 and concluded that the balancing of these factors weighed in favor of Mother
6 continuing to exercise primary physical custody, and ratified the status quo, an award of
7 primary physical custody to Mother. However, the Court did not include a defined
8 visitation schedule in the March 1, 2019, Order, which stated in part:

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

11 Thereafter, Father filed an appeal to the Nevada Supreme Court. Mother filed a
12 motion to dismiss the appeal which was granted by the Supreme Court as the Order
13 appealed from was not a "final order." Remittitur was returned to this Court. Mother
14 requested a hearing in writing on September 17, 2019. An Order setting hearing was
15 entered on September 25, 2019 which stated in relevant part:

16 IT IS HEREBY ORDERED that a hearing shall be held on the
17 8th day of November 2019, at 9:30 a.m. for one day.

18 IT IS HEREBY FURTHER ORDERED that the Plaintiff shall
19 file his proposed visitation order within twenty one (21) days of
the filing date of this order.

20 IT IS HEREBY FURTHER ORDERED that if the Parties
21 desire to address any issue other than visitation at this
hearing, then the Party must file a timely and appropriate
pleading.

22 Neither party filed a supplemental motion seeking relief prior to the November 8,
23 2019 hearing. Thus, the sole issue before the Court for this hearing is a visitation
24 schedule which enables entry of this order in the matter, which is a "final order."

25 WHEREFORE, good cause appearing, the Court ratifies adopts and approves the
26 stipulation of the parties as being in the best interest of the minor child and enters the
27 following Order:

28 1. The Court adopts and incorporates by reference in its entirety herein its prior

1 Order of March 1, 2019.

2 2. The parties shall share joint legal custody of Molokai Jaco Monahan, born
3 July 18, 2012.

4 3. Mother shall have primary physical custody of Molokai.

5 4. Father shall have visitation approximately 10 days per month throughout
6 the year as follows:

7 A. On the first Friday of each month from after school, or at 5:00 pm if
8 school is not in session, to the second Monday thereafter, 10 days
9 later. The Monday drop off shall be at Molokai's school, prior to
10 commencement of the school day, if school is in session. If school is
11 not in session, then the custodial exchange shall be at 5:00 pm.

12 B. Custodial pickups shall be by the parent getting custody of the child.

13 C. When school is not in session, Mother shall pickup the child for
14 custodial exchanges at the McDonald's in Yerington, the town where
15 Father resides. Father shall pickup the child for custodial exchanges
16 at the free standing McDonald's in Fallon (not the one inside
17 WalMart), the town where Mother resides.

18 D. The parties shall divide the Christmas recess from school equally.
19 Father shall have the first half of Christmas break in each odd
20 numbered year. Mother shall have the first half of the Christmas
21 break in each even numbered year.

22 E. The parties shall alternate the one week Spring break each year with
23 Mother having Spring break in each even numbered year. Father
24 shall have Spring break in each odd numbered year.

25 F. The parties shall alternate Thanksgiving day each year with Father
26 having Thanksgiving day in each even numbered year from 9:00 am
27 to 8:00 pm that same day. Mother shall have the child for Thanks-
28 giving in each odd numbered year.

1 G. Father shall have the child on his birthday, July 18, in each even
2 numbered year from 9:00 am to 6:00 pm that same day.

3 H. Should a 3 day holiday occur during Father's custodial period of time,
4 as identified on the school district calender, with the child's scheduled
5 return occurring on the holiday, then Father shall return the child on
6 Tuesday rather than Monday, consistent with the above provisions
7 regarding custodial exchanges.

8 I. Halloween, October 31, is subject to special provisions. Father shall
9 have the child for Halloween in odd numbered years. Mother shall
10 have the child for Halloween in even numbered years. Should Father
11 choose to exercise his visitation on this day with Molokai, he shall
12 have the child from after school until 9:00 pm. Father shall be
13 responsible for ALL transportation and driving for this visit.

14 5. The parties shall communicate regarding matters pertaining to the minor
15 child by means of a computer program called Talking Parents. The parent receiving a
16 communication shall respond timely if a response is required.

17 6. The parties may modify the custodial provisions of this Order by mutual
18 agreement in writing.

19 7. The child presently receives individualized tutoring in reading from his
20 classroom teacher each Monday through Thursday morning prior to the commencement
21 of the school day. Father has insisted on sitting in on some of these sessions. Mother has
22 objected, believing that his presence is inhibiting the tutoring process and does not further
23 the educational process. The Court declines to provide direction to the school, which is not
24 a party to this action. The Court leaves it to the school to determine whether either
25 parent's presence in these individualized tutoring sessions serves an educational purpose.
26 If the school does not make an affirmative determination that a parent's presence serves
27 an educational purpose, then the parents are precluded from sitting in on Molokai's
28 tutoring sessions.

1 8. The Court reserves jurisdiction and determination of Mother's request for an
2 award of attorney's fees.

3 9. All prior orders of the Court not specifically modified herein shall remain in
4 full force and effect.

5 10. PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEAL-
6 MENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISH-
7 ABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359
8 provides that every person having a limited right of custody to a child or any parent
9 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
11 the child in violation of an order of this court, or removes the child from the jurisdiction
12 of the court without the consent of either the court or all persons who have the right to
13 custody or visitation is subject to being punished for a category D felony as provided in
14 NRS 193.130.

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

19 IT IS SO ORDERED.

20 DATED this 20th day of November, 2019


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22 
23 DISTRICT JUDGE
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Exhibit - 3 –

Exhibit - 3 –

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 OCT -5 AM 11:25

TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Victoria Torar DEPUTY

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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 13, 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 obliga-
5 tions 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.

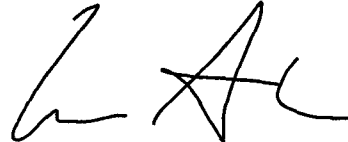
16 14. Mother's request for an award of attorney's fees and costs based upon
17 allegations that Father wrongfully withheld consent to the relocation is denied. Each
18 party shall be responsible for their own attorney's fees and costs.

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.

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

5 **IT IS SO ORDERED.**

6 DATED this 2nd day of October, 2020.

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9 _____
10 DISTRICT JUDGE

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CARUCCI AND ASSOCIATES
702 PLUMAS STREET RENO, NEVADA 89509
(775) 323-0400 FAX (775) 323-0466

Exhibit - 4-

Exhibit - 4 –

1 Case No. 15-CV-00418

2 Department II

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4
5 IN THE THIRD JUDICIAL DISTRICT COURT
6 IN AND FOR THE COUNTY OF LYON, STATE OF NEVADA
7 BEFORE THE HONORABLE LEON ABERASTURI
8 DISTRICT JUDGE, PRESIDING
9

10 ANTHONY JACOB MONAHAN,)
11)
12 Plaintiff,)
13 vs.)
14)
15 AMANDA KAITLYN HOGAN fka)
AMANDA KAITLYN KING,)
Defendant.)

16
17 ELECTRONIC-RECORDED TRANSCRIPT OF PROCEEDINGS
18 PARTIAL EXCERPTS FROM PROCEEDINGS
19 TUESDAY, SEPTEMBER 15, 2020
20 YERINGTON, NEVADA
21
22
23

24 Transcribed by: Shellie Loomis, RPR

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APPEARANCES:

For the Plaintiff: Aaron Bushur, Esq.
Reno, Nevada

For the Defendant: Roderic A. Carucci, Esq.
Reno, Nevada

1 YERINGTON, NEVADA, TUESDAY, SEPTEMBER 15, 2020, A.M. SESSION

2 -o0o-

3
4 (PARTIAL EXCERPTS FROM PROCEEDINGS.)

5 9:06:00-9:07:00

6 MR. CARUCCI: She and Brandon have a new child
7 who is going to be a year old, I think, in the next few weeks.
8 That child has some significant health issues and was admitted
9 to emergency care for some respiratory issues in late February
10 or early March, right before the COVID epidemic hit.

11 And according to the military directives, that
12 requires access to special military medical care, and there
13 were several duty stations to which Lieutenant Hogan could
14 have received transfer orders.

15 One was Virginia. One was for Lemoore,
16 California. One was Japan. Apparently, the one in California
17 was ruled out, because they didn't have appropriate medical
18 care facilities nearby for this child who had been very sick
19 and near death, I guess.

20 Oceana, Virginia does, and Japan does. And with
21 the assistance of his commanding officer, Lieutenant Hogan was
22 assigned to Virginia knowing that there would be issues
23 involving visitation with Kai, the child at issue here.

24
CAPITOL REPORTERS (775) 882-5322

1 9:12:25-9:14:00

2 BY MR. CARUCCI:

3 Q. And how long have you two been married?

4 A. Just over two years.

5 Q. And do you have a child together?

6 A. We do.

7 Q. What is that child's name?

8 A. Riley Michael Hogan.

9 Q. And how old is he?

10 A. He is ten months a few days ago.

11 Q. Let's kind of do things out of order just because
12 it came up where you talk about your new child.

13 In my opening statement, the Judge had said
14 something about he had some severe health issues?

15 A. Yes.

16 Q. Could you explain that to the court?

17 A. Sure. So, in the process of child care, one of
18 the other reasons for Amanda leaving work permanently, he
19 contracted RSV which is a common illness, but unfortunately he
20 also contracted pneumonia with that as well.

21 So his pediatrician then recommended after he had
22 about a three-fourths of the day stay near Life Flight Reno
23 for his breathing issues.

24 His pediatrician in a followup appointment after

1 his recovery which was about a month and a half long deemed it
2 was unfit for him to live in places that the poor air quality
3 such as Lemoore, California, common duty stations in that
4 case.

5 So, it was expanded upon with the military in an
6 Exceptional Family Member Program due to the medical
7 facilities that that duty station was ineligible for Riley
8 based on potential development for asthma.

9 Q. Okay. And so did that have some impact on where
10 you -- where your next duty assignment would be?

11 A. Yes.

12 Q. All right. Let's just -- all right, let's talk
13 about your career in the military since that seems to be an
14 issue here.

15
16 9:17:45-9:18:10

17 BY MR. CARUCCI:

18 Q. Okay. And was -- as I've heard, Lemoore was
19 ruled out; can you explain why?

20 A. The air quality there, and I was previously
21 stationed there for four years prior to coming to Fallon. So
22 the air quality there is highly problematic for anybody that
23 is sensitive to breathing disorders. And just in general,
24 many healthy people that move there actually result in

1 (indiscernible).

2 Q. When do you have to report to the naval air
3 station in Virginia?

4 A. No later than the 26th of October I start my next
5 school for a few weeks for my next job.

6

7 9:39:30-9:40:00

8 BY MR. BUSHUR:

9 Q. I'll try to state it a little bit. The last
10 thing you stated is "we can't stay here"; correct?

11 A. Yes.

12 Q. That's because of your military orders; correct?

13 A. Yes.

14 Q. But your military orders are directly related to
15 you, not to you and your wife; correct?

16 A. Well, the caveat to that is my son is also
17 ineligible to stay here in Fallon, our son together, because
18 of basically the Exceptional Family Member Program.

19 Q. So if, outside of this hearing, if your wife
20 chose to stay in Fallon, you could be deployed somewhere else
21 without your wife going. Your wife doesn't have to go with
22 you; correct?

23

24

1 9:50:40-9:52:00

2 BY MR. BUSHUR:

3 Q. Let me rephrase that. If the child was not
4 allowed to go to Virginia Beach, or Virginia, and your wife
5 ended up staying here, is there a mechanism for you to be able
6 to travel back and forth to visit with you your wife?

7 A. Yeah, it would be commercial air fair. However,
8 one additional point, and that is my son Riley, our common
9 child, is not eligible to stay here because of the Exceptional
10 Family Member Program.

11 So it would be forcing me to be a single father
12 in Virginia Beach to manage my own son if my wife had to stay
13 here with Malakai for his ten days of visitation.

14 Q. When you say, "your child Riley", that's the
15 approximately one-year-old; correct?

16 A. Yes.

17 Q. With Miss Hogan; correct?

18 A. Yes.

19 Q. Okay. So it's your combined child?

20 A. Yes.

21 Q. Okay. Are you implying that the child has to go
22 to Virginia Beach?

23 A. We're not. He's not eligible for medical care to
24 be here. So, for example, Fallon is not eligible to be

1 stationed for my dependents in the form of -- because of the
2 Exceptional Family Member Program.

3 So, essentially, he can't be here any longer than
4 our current duty orders exist. So in order to do that, I
5 would have to dis-enroll him and then it would be just a
6 medical issue at that point.

7 Q. Okay. But, I guess what I'm asking, the military
8 isn't forcing your child, your other child to go to Virginia
9 Beach, they're just authorizing whatever medical treatment he
10 needs in Virginia Beach; correct?

11 A. Yes. So, technically, I could leave him here.
12 It would just be a violation if I kept him enrolled.

13
14 9:56:20-9:57:00

15 BY MR. BUSHUR:

16 Q. So, just for clarification, Lemoore, California,
17 where is that located? Is that in the Central Valley?

18 A. Central Valley by Fresno, 45 minutes south of
19 Fresno.

20 Q. Okay. So -- and the only reason you can't go to
21 Lemoore is because of your youngest child's health issues?

22 A. Yeah, it's preempted, yes.

23 Q. Okay. So, there's no other reasons why you
24 couldn't go to Lemoore, other than that health issue for that

1 child; correct?

2 A. As far as can't go to Lemoore, yes.

3 Q. Okay.

4 A. There are preferences as well, but --

5 Q. How far is Lemoore from here, approximately?

6 A. Six and a half hours, seven hours.

7 Q. Okay. So is there any reason why your wife
8 couldn't stay here if you got transferred to Lemoore?

9 A. There could be, because I have military orders
10 authorizing me to Virginia for next (indiscernible).

11

12 10:00:50-10:02:00

13 BY MR. BUSHUR:

14 Q. Bounce around a little bit more here. So, the
15 three options for your duty station was Lemoore, Japan or
16 Virginia; correct?

17 A. Physically, yes. But, no, my option is Virginia.

18 Q. Okay. But originally, the three -- there was
19 three locations that there was a potential you could be
20 transferred to; correct? Those three locations?

21 A. If -- if we didn't have the reality of Riley,
22 yes.

23 Q. Okay. Exactly, that's what I'm getting to, the
24 reality of Riley. The reason you couldn't do the Lemoore one

1 is because of the air quality?

2 A. Yes.

3 Q. Correct?

4 And is that because of the virus, or is it
5 just --

6 A. No, it's just awful there.

7 Q. Okay. It's --

8 A. -- the air quality is crappy year round, because
9 it's a dust bowl. Essentially, like I said, I spent four
10 years there. It is essentially the Central Valley, the
11 agricultural center of the state, and it's bounded on all
12 sides with openings to the south that basically tunnels all of
13 the agricultural and livestock dust and everything in the air
14 all the time.

15 Q. So -- and then the other option with Japan
16 potentially, but is there an issue bringing dependents to
17 Japan, or --

18 A. It is for Riley, because it actually is
19 considered a high dust scenario as well. It's in the very
20 rural south part of Japan. It's in the Matsugi (phonetic),
21 the Marine Corp Base, so the medical facilities there as well
22 as the air quality is also lower.

23 However, dependents are difficult to bring there,
24 a family of four, just based on the logics of that place.

1 10:06:30-10:07:23

2 BY MR. BUSHUR:

3 Q. And just for clarification, the youngest child --
4 so, did you testify, is it he or she?

5 A. Riley is a he.

6 Q. He. So, he has asthma?

7 A. No, that's not what I said.

8 Q. What is it he has?

9 A. It is a -- consider a pre- asthma condition. So
10 it's called reactive airway breathing disease. And,
11 essentially, it's just showing the child is susceptible to,
12 essentially, to contaminants in the environment causing
13 respiratory issues.

14 So he's more susceptible to it, much like if you
15 get hypothermia, you'll be more susceptible with hypothermia
16 in the future.

17 Q. Does the child have any other medical?

18 A. No, he's healthy as an ox, however this is
19 prohibited because of how severely he reacted to the RSV and
20 development of pneumonia. His pediatrician said that any
21 future exposure for long-term environmental impacts like that
22 could develop eventually into asthma, but we expect him to
23 grow out of it, like I said, age four to five.

24

1 11:47:45-11:49:40

2 MR. BUSHUR: Staying with subsection B, when you
3 look at the best interests, it's under 125C.0035 subsection 4,
4 and it goes A through L, there's only a few best interests
5 standards that really need to be brought up.

6 The first one is C: Which parent is more likely
7 to allow the child to have frequent association and continue
8 in a relationship with the noncustodial parent.

9 This is kind of a minor issue in this particular
10 case at this particular time, but my client did testify that
11 since the last custody change when he was given ten days a
12 month and Miss Hogan was given approximately 20 days a month,
13 that there weren't -- any accommodations that were made where
14 my client would have a little bit of extra time here or there
15 had to be made up, or for the most part had to be made up.

16 So even while still in this general area, Miss
17 Hogan hasn't gone above and beyond to involve my client with
18 the child's life any more than she absolutely had to, and
19 there's no reason to expect that it will change if she moves
20 3,000 miles across the country.

21 Subsection D, the level of conflict between the
22 parents.

23 MR. CARUCCI: Your Honor, I have to object. This
24 is not a custody change of motion, there is not a custody

1 change of motion pending. And Mr. Bushur is just going
2 through the custodial factors and it's irrelevant to this
3 situation.

4 THE COURT: Well, it's the -- it's a new
5 argument, I haven't heard it before. But, they do use the
6 same phrase as interests, and they do define best interests in
7 125C.0035(4). So, I'll listen to it.

8 MR. BUSHUR: And, Your Honor, and subsection 3 of
9 125C.007 also requires that the Court find that Mr. Carucci
10 met his burden to prove that relocation with the child is in
11 the child's best interests. That's simply why I'm going with
12 these standards.

13 I'll try to condense them into just this one.

14 THE COURT: No, go ahead, you're fine.

15 MR. BUSHUR: Okay. I'm sorry, I left off -- the
16 level of conflict between the parties. Both parties have
17 basically acknowledged that they have a somewhat high level of
18 conflict...

19
20 12:07:20-12:10:00

21 THE COURT: It is not intended to deprive the
22 non-relocating parent of his parenting time.

23 In terms of the best interests of the child, this
24 is a difficult one. Again, in terms of the best interests,

1 it's an interesting argument. I haven't had it before as to
2 the factors in 035(4) applying, but again, I see your
3 consternation, Mr. Carucci, as to it's not a custody
4 modification. But at the same time, the legislature does
5 utilize a definition of best interests of what factors the
6 Court's going to look at.

7 But in terms of going through the factors in 4,
8 the Court had previously done that in a previous, and I don't
9 see the relocation as affecting the ultimate determination as
10 to whether or not mom can relocate under 007.

11 MR. CARUCCI: You did mention, in your original
12 order in November -- no, in March, you made mention of the
13 fact that she was going to relocate.

14 THE COURT: No, I understood that, but I didn't
15 have a relocation motion before me.

16 MR. CARUCCI: No.

17 THE COURT: So I didn't decide the issue. I
18 understood that the relocation would come up, that's the
19 problem with this case, procedurally. I don't think it was a
20 secret that mom was seeking to get primary because it made her
21 life easier when it got to the relocation.

22 Certainly under the old Schwartz, Potter, I'm not
23 clear under 007, but under the old case law, if mom has
24 primary, it's less of a hill to climb.

1 Not clear to me under 007, but again, I don't see
2 the best interests factors changing the relocation analysis,
3 having considered A through L.

4 In terms of the actual advantage and the quality
5 improvement for the child, one of the problems we have in Lyon
6 and Churchill County is the school districts have not been
7 able to keep up with the growth.

8 20 years ago, I don't think you would have been
9 able to make the argument that you made today...

1 STATE OF NEVADA)
)
2 COUNTY OF LYON)

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4 I, Shellie Loomis, a transcriber for the Third
5 Judicial District Court of the State of Nevada, in and for
6 Lyon County, do hereby certify:

7 That I received and audio recording of the
8 above-entitled Court and transcribed the partial excerpts of
9 proceedings herein into typewriting as herein appears to the
10 best of my ability;

11 That the foregoing partial transcript of excerpts
12 is a full, true and correct transcription of said proceedings.

13 DATED: At Carson City, Nevada, this 27th day of
14 January, 2021.

15
16 //SHELLIE LOOMIS//
17 Shellie Loomis, RPR
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