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10 *Attorney for Defendants*

Electronically Filed
Jun 08 2021 03:18 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

11 **DISTRICT COURT, FAMILY DIVISION**

12 **CLARK COUNTY, NEVADA**

13 **IGNACIO AVILA, JR.,**

14 Plaintiff,

15 vs.

16 **ROSIE MARTINEZ and HENRY**
17 **OLIVA,**

18 Defendant.

CASE NO.: D-15-515892-C

DEPT. NO.: T

19 **NOTICE OF APPEAL**

20
21 **NOTICE IS HEREBY GIVEN** that Appellants, ROSIE MARTINEZ and
22 HENRY OLIVA, by and through their counsel, Fred Page, Esq., hereby appeal to
23 the Supreme Court of Nevada the Findings of Fact, Conclusions of Law, and Order
24

25 ///

26 ///

27 ///

from the April 16, 2021, evidentiary hearing a copy of which is attached hereto.

DATED this 28th day of May 2021

PAGE LAW FIRM



FRED PAGE, ESQ.

Nevada Bar No. 6080

6930 South Cimarron Road, Suite 140

Las Vegas, Nevada 89113

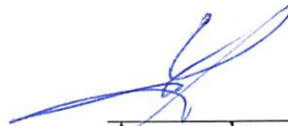
(702) 823-2888

Attorney for Defendants/Appellants

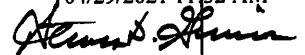
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28th day of May 2021 that the foregoing NOTICE OF APPEAL was served pursuant to NECFR 9 by e-service to Michael Burton, Esq. attorney for Plaintiff/Respondent



An employee of Page Law Firm


CLERK OF THE COURT

ORDER
Michael Burton, Esq.
Nevada Bar Number 14351
Kimber Laux, Esq.
Nevada Bar Number 15263
MCFARLING LAW GROUP
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335 phone
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Attorney for Plaintiff,
Ignacio Avila, Jr.

**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

IGNACIO AVILA, JR.,

Plaintiff,

vs.

ROSIE MARTINEZ and HENRY OLIVA,

Defendants.

Case Number: D-15-515892-C
Department: T

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

THIS MATTER came before the Honorable Nadin Cutter for an Evidentiary Hearing regarding the paternity of Alan Sergio Oliva ("Alan") on April 16, 2021 at 10 a.m. Present at the hearing were Plaintiff, Ignacio Avila, Jr. ("Ignacio"), represented by his attorney of record, Kimber Laux, Esq.; Defendant, Rosie Martinez ("Rosie"), in Proper Person; and Defendant, Henry Oliva ("Henry"), represented by his attorney of record, Theodore M. Medlyn, Esq.

The Court, having reviewed the papers and pleadings on file herein, and having taken evidence and testimony from trial, argument from counsel, and being duly and fully advised in the premises, issues the following findings, conclusions of law, and orders:

1 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

2 **THE COURT FINDS** that the Court cannot go outside of the law to make its decision.

3 The Court must start with the law.

4 **THE COURT FURTHER FINDS** that the parties' situation is incredibly difficult and sad,
5 but none of the things that have happened are Ignacio's fault. Ignacio is innocent in this case as
6 much as Alan is innocent in this case.

7 **THE COURT FURTHER FINDS** that pursuant to NRS 126.051(2), a paternity test that
8 was ordered by the Nevada Supreme Court, taken by Ignacio, and confirmed in this case in 2020
9 is conclusive. Ignacio Avila Jr. is conclusively the biological father and legal father of Alan.

10 **THE COURT FURTHER FINDS** that Ignacio asked Rosie about Alan's paternity after
11 the child's birth and even while Rosie was pregnant with Alan and was lied to.

12 **THE COURT FURTHER FINDS** that Ignacio confronted Rosie about Alan's paternity
13 in 2016 and 2017 and was lied to again.

14 **THE COURT FURTHER FINDS** that at 11:50 a.m. during the parties' evidentiary
15 hearing, Rosie lied to the Court two times.

16 **THE COURT FURTHER FINDS** that the child's birth certificate needs to be amended
17 to reflect the name of Alan's father as Ignacio Avila Jr.

18 **THE COURT FURTHER FINDS** that the Court does not have enough evidence to find
19 that Henry's paternity test was fraudulent. The Court does not care to go down that path.

20 **THE COURT CONCLUDES** that, with respect to Henry's Voluntary Acknowledgment
21 of Paternity ("VAP") of Alan, NRS 126.053 governs voluntary acknowledgements of paternity or
22 parentage. Under NRS 126.053(3), after the expiration of the period during which an
23 acknowledgement may be rescinded, a VAP "may not be challenged except upon the grounds of
24 fraud, duress or material mistake of fact." The burden of proof is on the person challenging the

1 Acknowledgment to establish that the Acknowledgement was signed because of fraud, duress, or
2 material mistake of fact.

3 **THE COURT FURTHER FINDS** that, here, there was either a material mistake of fact
4 or fraud when Henry signed the VAP of Alan.

5 **THE COURT FURTHER CONCLUDES** that the conclusive presumption set forth in
6 NRS 126.051(2) overcomes any VAP signed by any person that was not the child's biological
7 father.

8 **THE COURT FURTHER FINDS** that when this matter was pending in 2018, before the
9 matter was appealed, Henry and Rosie intentionally deprived Ignacio of time with Alan. That
10 withholding was affirmed in testimony by all three parties – Henry, Rosie, and Ignacio. Ignacio
11 had overnights with Alan and those overnights were suddenly taken away from him three (3) years
12 ago.

13 **THE COURT FURTHER FINDS** that not only has Ignacio missed Alan's infancy,
14 toddlerhood, and young childhood, but after there was a decision in 2018, Ignacio's visitation was
15 further restricted. The best interest factor under NRS 125C.0035 which considers "which parent is
16 more likely to allow the child to have frequent associations and a continuing relationship with the
17 noncustodial parent" incredibly favors Ignacio.

18 **THE COURT FURTHER FINDS** that Ignacio was denied the opportunity to settle this
19 matter until Alan was 6.5 years old.

20 **THE COURT FURTHER FINDS** that there is no finding of contempt against Ignacio for
21 failure to retain a guardian ad litem because no Order to Show Cause is pending and there is no
22 contempt proceeding before the Court.

23 **THE COURT FURTHER CONCLUDES** that under NRS 126.081(1), paternity actions
24 such as this are not time-barred until the minor child turns 21 years old.

1 **THE COURT FURTHER FINDS** that there is a conclusive presumption under NRS
2 126.051(2) that Ignacio is Alan's father.

3 **ORDERS**

4 **IT IS HEREBY ORDERED** that Ignacio is confirmed as Alan's father.

5 **IT IS FURTHER ORDERED** that Alan's name shall be changed and his birth certificate
6 shall be amended to reflect Ignacio's last name. The child's name shall be changed to: Alan Sergio
7 Avila. Ignacio shall bear the cost of amending Alan's birth certificate and, after the birth certificate
8 is amended, he shall provide Rosie with an original birth certificate of her own, at his expense.
9 The parties shall confer regarding changing Alan's middle name.

10 **IT IS FURTHER ORDERED** that Ignacio and Rosie shall have joint physical custody of
11 Alan, with Ignacio's timeshare to begin immediately. Specifically, Ignacio shall have custody of
12 Alan beginning Thursday at 2 p.m. and ending Sunday at 8 p.m. each week, such that Ignacio will
13 have three overnights with Alan. Ignacio shall pick Alan up from Henry's home after the parties'
14 evidentiary hearing ends. Ignacio and Rosie shall communicate as to any backpacks or other items
15 that need to be exchanged between them.

16 **IT IS FURTHER ORDERED** that Ignacio is encouraged to seriously consider asking
17 Henry to watch Alan on Fridays when Ignacio works such that Alan, Henry, and Henry Jr. can
18 spend time together when Alan is at work.

19 **IT IS FURTHER ORDERED** that, temporarily, Ignacio and Rosie shall follow the
20 Department T default holiday and visitation schedule. Ignacio and Rosie shall attend FMC to
21 establish a permanent holiday and vacation timeshare.

22 **IT IS FURTHER ORDERED** that a Return Hearing from FMC Mediation and a Status
23 Check regarding the minor child's middle name is set for May 26, 2021 at 10 a.m.

24 ///

IT IS FURTHER ORDERED that, with respect to Alan, Henry is now considered a third party in this matter. If he would like to request third-party visitation, the Court may entertain the same. However, the visits, if any, will not be the same as the visitation Henry previously exercised with Alan. The visits, if any, will be akin to grandparent visitation.

NOTICES

The parties are subject to the provisions of NRS 31A.025 through 31A.240 which deal with the recovery of payments for the support of minor children by the welfare division of the Department of Human Resources or the District Attorney; and, that his/her employer can be ordered to withhold his/her wages or commissions for delinquent payments of child support.

If you want to adjust the amount of child support established in this order, you **MUST** file a motion to modify the order or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation not submitted, the child support obligation established in this order will continue until such time as all children who are subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

The parties shall submit the information required in NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare Division of the Department of Human Resources within ten (10) days from the date the Decree in this matter is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten (10) days should any of that information become inaccurate.

1 The following statutory notices regarding custody of a minor children apply to the parties:

2 A. Pursuant to NRS 125C.006, the parties are hereby placed on notice of the following:

3 1. If primary physical custody has been established pursuant to an order, judgment
4 or decree of a court and the custodial parent intends to relocate his or her residence
5 to a place outside of this State or to a place within this State that is at such a distance
6 that would substantially impair the ability of the other parent to maintain a
7 meaningful relationship with the child, and the custodial parent desires to take the
8 child with him or her, the custodial parent shall, before relocating:

9 (a) Attempt to obtain the written consent of the noncustodial parent to
10 relocate with the child; and

11 (b) If the noncustodial parent refuses to give that consent, petition the court
12 for permission to relocate with the child.

13 2. The court may award reasonable attorney's fees and costs to the custodial parent
14 if the court finds that the noncustodial parent refused to consent to the custodial
15 parent's relocation with the child:

16 (a) Without having reasonable grounds for such refusal; or (b) For
17 the purpose of harassing the custodial parent.

18 3. A parent who relocates with a child pursuant to this section without the written
19 consent of the noncustodial parent or the permission of the court is subject to the
20 provisions of NRS 200.359.

21 B. Per NRS 125C.0065, the parties are hereby placed on notice of the following:

22 1. If joint physical custody has been established pursuant to an order, judgment or
23 decree of a court and one parent intends to relocate his or her residence to a place
24 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.

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

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the relocating parent.

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

C. Per NRS 125C.0045 (6), the parties are hereby placed on notice of the following:

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR
DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY

1 D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person
2 having a limited right of custody to a child or any parent having no right of custody
3 to the child who willfully detains, conceals or removes the child from a parent,
4 guardian or other person having lawful custody or a right of visitation of the child
5 in violation of an order of this court, or removes the child from the jurisdiction of
6 the court without the consent of either the court or all persons who have the right
7 to custody or visitation is subject to being punished for a category D felony as
8 provided in NRS 193.130.

9 D. Per NRS 125C.0045 (7), the parties are hereby placed on notice of the following:

10 The parties, and each of them, are hereby placed on notice that the terms of the
11 Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague
12 Conference on Private International Law, apply if a parent abducts or wrongfully
13 retains a child in a foreign country. Upon the agreement of the parties, Nevada is
14 hereby declared the state, and the United States of America is hereby declared the
15 country of habitual residence of the child for the purposes of applying the aforesaid
16 terms of the Hague Convention.

17 IT IS SO ORDERED.

18 Dated this 29th day of April, 2021

19 

20 9FA DFA 73B4 7D76

21 Nadin Cutter

22 Approved as to form and content:

23 BOWEN LAW OFFICES

24 Submitted by:

MCFARLING LAW GROUP

/s/ Kimber Laux

Michael Burton, Esq.
Nevada Bar Number 14351
Kimber Laux, Esq.
Nevada Bar Number 15263
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(702) 565-4335
Attorney for Plaintiff,
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/s/ Theodore Medlyn

Theodore M. Medlyn, Esq.
Nevada Bar Number 15284
9960 W. Cheyenne Ave., Ste. 250
Las Vegas, NV 89129
(702) 240-5191
Attorney for Defendant,
Henry Oliva

From: [Theodore Medlyn](#)
To: [Kiya Jack](#)
Subject: Re: Avila v. Martinez and Oliva - FCCL and Order
Date: Thursday, April 29, 2021 8:54:05 AM

You may affix my e-signature.

Sent from my Sprint Samsung Galaxy S20+ 5G.
Get [Outlook for Android](#)

From: Kiya Jack <Kiyaj@mcfarlinglaw.com>
Sent: Thursday, April 29, 2021 8:52:15 AM
To: Theodore Medlyn <tmedlyn@lvlawfirm.com>
Cc: Raelene Jemison <RJemison@lvlawfirm.com>; Tricia Wilcox <TWilcox@lvlawfirm.com>; Kimber Laux <Kimberl@mcfarlinglaw.com>; MLG Client File Copy <clientcc@mcfarlinglaw.com>
Subject: Avila v. Martinez and Oliva - FCCL and Order

Good Morning,

Please find attached the revised FCCL and Order. Let us know if you approve. Thanks!

Sincerely,

Kiya Jack | Legal Assistant | Paralegal



6230 W Desert Inn Rd. Las Vegas, NV 89146
702-565-4335 phone | 702-732-9385 fax
Electronic service: eservice@mcfarlinglaw.com
Website: www.mcfarlinglaw.com
Direct email: kiyaj@mcfarlinglaw.com

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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
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6 Ignacio Avila, Jr., Plaintiff.

CASE NO: D-15-515892-C

7 vs.

DEPT. NO. Department T

8 Rosie Martinez, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/29/2021

15 Gayle Nathan .

GayleNathanLaw@gmail.com

16 Jerome Bowen

twilcox@lvlawfirm.com

17 Rosie Martinez

rose_n_vegas@yahoo.com

18 Raelene Jemison

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19 Arezou Piroozi

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20 Mcfarling Law Group

eservice@mcfarlinglaw.com

21 Theodore Medlyn

tmedlyn@lvlawfirm.com
22
23
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27
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EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. D-15-515892-C**

Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

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 §

Location: **Department T**
 Judicial Officer: **Cutter, Nadin**
 Filed on: **06/03/2015**
 Case Number History:

CASE INFORMATION**Related Cases**

D-21-628007-V (1J1F Related - Rule 5.103)

Case Type: **Child Custody Complaint****Statistical Closures**

04/29/2021 Settled/Withdrawn With Judicial Conference or Hearing
 09/21/2018 Settled/Withdrawn With Judicial Conference or Hearing
 03/29/2018 Settled/Withdrawn With Judicial Conference or Hearing
 07/22/2016 Settled/Withdrawn With Judicial Conference or Hearing
 06/29/2016 Settled/Withdrawn With Judicial Conference or Hearing

Case
 Status: **04/29/2021 Closed**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number D-15-515892-C
 Court Department T
 Date Assigned 01/04/2021
 Judicial Officer Cutter, Nadin

PARTY INFORMATION**Plaintiff****Avila, Ignacio, Jr.***Lead Attorneys*

Burton, Michael James
Retained
 702-565-4335(W)

Avila, Ignacio, Jr.

Removed: 08/13/2018
 Data Entry Error

Avila, Ignacio, Jr.

Removed: 09/05/2018
 Data Entry Error

Piroozzi, Arezou H.
Retained
 702-260-1010(W)

Defendant**Martinez, Rosie**

Pro Se
 702-353-9271(H)

Subject Minor**Martinez-Olivia, Jazlynn Rose****DATE****EVENTS & ORDERS OF THE COURT****EVENTS**

05/28/2021



Notice of Appeal

Filed By: Counter Claimant Martinez, Rosie; Third Party Defendant Oliva, Henry
Notice of Appeal

05/25/2021



Notice of Appearance

Party: Third Party Defendant Oliva, Henry
Notice Of Appearance

05/03/2021



Notice of Withdrawal

Filed by: Counter Claimant Martinez, Rosie; Third Party Defendant Oliva, Henry
Notice of Withdrawal of Attorney of Record

04/29/2021



Notice of Entry
















CASE SUMMARY

CASE NO. D-15-515892-C

	Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>
04/29/2021	 Order <i>Findings of Fact, Conclusions of Law and Order</i>
04/23/2021	 Estimate of Transcript <i>APRIL 16, 2021</i>
04/16/2021	 Order for Family Mediation Center Services <i>ORDER FOR FAMILY MEDIATION CENTER SERVICES (emailed to Counsel and Mother 04.19.21 nlh)</i>
04/12/2021	 Pre-trial Memorandum Filed By: Third Party Defendant Oliva, Henry <i>Defendant's Pre-Trial Memorandum</i>
04/09/2021	 Pre-trial Memorandum Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Plaintiff's Pretrial Memorandum</i>
03/25/2021	 Substitution of Attorney Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Substitution of Attorney of Record for Plaintiff</i>
02/01/2021	 Notice of Rescheduling of Hearing <i>Notice of Rescheduling of Evidentiary Hearing</i>
01/21/2021	 Substitution of Attorney Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Substitution of Attorney of Record for Plaintiff</i>
01/08/2021	 Witness List Filed by: Third Party Defendant Oliva, Henry <i>Defendant Henry Olivas First Amended Witness List</i>
01/07/2021	 Answer and Counterclaim - First Appearance Fee Not Required Filed by: Third Party Defendant Oliva, Henry <i>Answer and Counterclaim to First Amended Complaint for Custody</i>
01/07/2021	 Answer and Counterclaim - First Appearance Fee Not Required Filed by: Third Party Defendant Oliva, Henry <i>Answer and Counterclaim to Complaint for Custody</i>
01/04/2021	Administrative Reassignment - Judicial Officer Change <i>Judicial Reassignment to Judge Nadin Cutter</i>
12/23/2020	 Witness List Filed by: Third Party Defendant Oliva, Henry <i>Defendant Henry Oliva's Witness List</i>
12/18/2020	 Notice of Entry of Order Filed By: Third Party Defendant Oliva, Henry <i>Notice of Entry of Order</i>
12/16/2020	 Order <i>Order Regarding Court's November 25, 2020 Minute Order</i>
12/09/2020	 Notice of Entry of Order Filed By: Third Party Defendant Oliva, Henry <i>Notice of Entry of Order</i>
12/09/2020	 Order <i>Order Regarding Court's October 26, 2020 Minute Order</i>
11/14/2020	 Opposition and Countermotion

CASE SUMMARY

CASE NO. D-15-515892-C

	<p>Filed By: Third Party Defendant Oliva, Henry <i>Defendant Henry Oliva's Opposition To Plaintiff's Motion For Reconsideration Of The Order Filed August 17, 2020, For Attorney's Fees And Costs, And For Other Related Relief In The Above-Entitled Matter And Countermotion For Attorney's Fees</i></p>
10/20/2020	 Certificate of Service <i>Certificate of Service- Notice of Hearing</i>
10/20/2020	 Certificate of Service <i>Certificate of Service- Motion for Reconsideration</i>
10/12/2020	 Notice of Hearing <p>Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Hearing</i></p>
10/09/2020	 Exhibits <i>Exhibit Appendix Motion to Reconsider</i>
10/09/2020	 Motion to Reconsider <p>Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Plaintiff's Motion for Reconsideration of the Order Filed August 17, 2020, for Attorney's Fees and Costs, and for Other Related Relief</i></p>
09/23/2020	 Reply <p>Filed By: Third Party Defendant Oliva, Henry <i>Defendant Oliva's Reply To Plaintiff's Opposition To Motion To Obtain The Original Sealed Birth Certificates And Opposition To Plaintiff's Countermotion To Strike Improper Pleading From The Record; And For Plaintiff's Attorney's Fees And Costs Incurred Herein And For Related Relief</i></p>
09/21/2020	 Certificate of Service <p>Filed by: Third Party Defendant Oliva, Henry <i>Certificate of Service</i></p>
09/18/2020	 Notice of Hearing <i>Notice of Hearing</i>
09/17/2020	 Clerk's Notice of Nonconforming Document <i>Clerk's Notice of Nonconforming Document</i>
09/16/2020	 Opposition and Countermotion <p>Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Plaintiff's Opposition to Intervenor Henry Oliva's Motion, et. al. and Counter Motion to Strike Intervenor's Improper Pleading, et. al.</i></p>
09/15/2020	 Exhibits <p>Filed By: Third Party Defendant Oliva, Henry <i>Appendix to Defendant Henry Oliva's First Amended Motion to Amend an Order or in the Alternative Correct Omissions in the Order</i></p>
09/15/2020	 Motion to Amend <p>Filed by: Attorney Mercer, Michele L.; Third Party Defendant Oliva, Henry <i>Defendant Henry Oliva's First Amended Motion to Amend an Order or in the Alternative Correct Omissions in the Order</i></p>
09/14/2020	 Motion to Amend <p>Filed by: Third Party Defendant Oliva, Henry <i>Defendant Henry Oliva's Motion To Amend An Order Or In The Alternative Correct Omissions In The Order**No Designation</i></p>
09/01/2020	 Certificate of Service <p>Filed by: Third Party Defendant Oliva, Henry <i>Certificate of Service</i></p>
08/28/2020	 Certificate of Service

CASE SUMMARY

CASE NO. D-15-515892-C

	Filed by: Third Party Defendant Oliva, Henry <i>Certificate of Service</i>
08/27/2020	 Notice of Hearing <i>Notice of Hearing</i>
08/26/2020	 Motion Filed By: Third Party Defendant Oliva, Henry <i>Motion for Order to Obtain the Original Sealed Birth Certificates from the Nevada Department of Health and Human Services, Division of Public Behavioral Health, Vital Records</i>
08/17/2020	 Order <i>Order</i>
08/04/2020	 Order Setting Evidentiary Hearing <i>Amended Order Setting Evidentiary Hearing</i>
08/04/2020	 Notice of Rescheduling of Hearing <i>Notice of Rescheduling of Hearing</i>
07/21/2020	 Notice of Rescheduling of Hearing <i>Notice of Rescheduling of Hearing</i>
07/17/2020	 Receipt of Copy <i>JUNE 23, 2020</i>
07/17/2020	 Final Billing of Transcript <i>JUNE 23, 2020</i>
07/17/2020	 Certification of Transcripts Notification of Completion <i>JUNE 23, 2020</i>
07/17/2020	 Transcript of Proceedings <i>June 23, 2020</i>
07/16/2020	 Estimate of Transcript <i>JUNE 23, 2020</i>
07/06/2020	Administrative Reassignment to Department T <i>Civil Domestic Case Reassignment from Judge David Gibson Jr. Department L</i>
06/23/2020	 Clerk's Notice of Hearing <i>Clerk's Notice Of Hearing</i>
06/22/2020	 Affidavit Filed By: Third Party Defendant Oliva, Henry <i>Affidavit Of Shell Mercer, Esq. In Support Of Defendant Henry Oliva's Motion To Continue Hearing</i>
06/22/2020	 Motion to Continue Filed by: Third Party Defendant Oliva, Henry <i>Defendant Henry Oliva's Motion To Continue Hearing</i>
06/22/2020	 Notice of Appearance Party: Third Party Defendant Oliva, Henry <i>Notice of Appearance</i>
03/11/2020	 Notice of Rescheduling of Hearing <i>Notice of Rescheduling of Hearing</i>
03/02/2020	 Exhibits Filed By: Counter Defendant Avila, Ignacio, Jr. <i>EXHIBIT APPENDIX IN SUPPORT OF OPPOSITION TO MOTION AND NOTICE OF MOTION TO MODIFY CHILD SUPPORT AND/OR SPOUSAL SUPPORT AND COUNTER-MOTION FOR MODIFICATION OF CUSTODY; TO AWARD PLAINTIFF PRIMARY</i>

CASE SUMMARY

CASE No. D-15-515892-C

PHYSICAL CUSTODY OF THE MINOR CHILD BASED UPON CHANGED CIRCUMSTANCES; FOR JOINT LEGAL CUSTODY TO REMAIN STATUS QUO; TO SET CHILD SUPPORT; TO AWARD PLAINTIFF THE TAX EXEMPTION; FOR SPECIFIC VISITATION FOR DEFENDANT; FOR MANDATORY MEDIATION; FOR ATTORNEY S FEES and COSTS; AND FOR OTHER RELATED RELIEF.

03/02/2020



Opposition and Countermotion

Filed By: Counter Defendant Avila, Ignacio, Jr.

Plaintiff's Opposition to Motion and Notice of Motion to Modify Child Support and/or Spousal Support And Counter-Motion for Modification of Custody; To Award Plaintiff Primary Physical Custody of the Minor Child Based Upon Changed Circumstances; For Joint Legal Custody to Remain Status Quo; To Set Child Support; To Award Plaintiff the Tax Exemption; For Specific Visitation to Defendant; For Mandatory Mediation; For Attorney's Fees and Costs; And For Other Related Relief

02/25/2020



NV Supreme Court Clerks Certificate/Judgment -Remanded

Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Reversed and Remand

01/31/2020



Certificate of Service

Filed by: Counter Claimant Martinez, Rosie
Certificate of Service

01/31/2020



Financial Disclosure Form

Filed by: Counter Claimant Martinez, Rosie
Financial Disclosure Form

01/31/2020



Motion

Filed By: Counter Claimant Martinez, Rosie
Defendant's Motion and Notice of Motion to Modify Child Support and/or Spousal Support

12/28/2018



Transcript of Proceedings

Hearing date January 25, 2018

12/28/2018



Transcript of Proceedings

Hearing date September 11, 2018

12/28/2018



Final Billing of Transcript

Hearing dates January 25, 2018; September 11, 2018

12/28/2018



Certification of Transcripts Notification of Completion

Hearing dates January 25, 2018; September 11, 2018

12/28/2018



Receipt of Copy

Hearing dates January 25, 2018; September 11, 2018

12/20/2018



Case Appeal Statement

Case Appeal Statement

12/20/2018



Request Transcript of Proceedings

Party: Counter Defendant Avila, Ignacio, Jr.
Request for Transcript of Proceedings

12/19/2018



Estimate of Transcript

Hearing dates January 25, 2018; September 11, 2018

12/10/2018

Administrative Reassignment - Judicial Officer Change

Judicial Reassignment - From Judge Jennifer Elliott to Judge David Gibson Jr.

10/18/2018



Notice of Appeal

Filed By: Plaintiff Avila, Ignacio, Jr.
Notice of Appeal

09/25/2018



Notice of Entry of Order/Judgment

Filed by: Third Party Defendant Oliva, Henry
Notice Of Entry Of Order On Plaintiff's Motion For Reconsideration; And Judgement For An Award Of Attorney's Fees

CASE SUMMARY













CASE NO. D-15-515892-C

09/21/2018	 Order Filed By: Third Party Defendant Oliva, Henry <i>Order On Plaintiff's Motion For Reconsideration; And Judgement For An Award Of Attorney's Fees</i>
09/05/2018	 Notice of Non Opposition Filed by: Plaintiff Avila, Ignacio, Jr. <i>Notice of Non-Opposition to Plaintiff's Motion to Reconsider the Order Entered June 20, 2018.</i>
08/30/2018	 Affidavit of Service Filed By: Counter Defendant Avila, Ignacio, Jr. <i>AFFIDAVIT OF SERVICE</i>
08/15/2018	 Certificate of Service Filed by: Third Party Defendant Oliva, Henry <i>Certificate Of Service</i>
08/14/2018	 Opposition and Countermotion Filed By: Third Party Defendant Oliva, Henry <i>Counter-Defendant Henry Oliva's Opposition To Motion To Reconsider The Order Entered June 20, 2018; And Opposition To Plaintiff's Motion Fr Attorney's Fees And costs, And Counter-Defendant's Motion For Attorney's Fees And Costs</i>
08/03/2018	 Affidavit of Service Filed By: Plaintiff Avila, Ignacio, Jr. <i>Affidavit of Service</i>
07/06/2018	 Motion Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Motion To Reconsider The Order Entered June 20, 2018</i>
06/20/2018	 Notice of Entry of Order Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Order</i>
06/15/2018	 Order Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Order</i>
05/09/2018	 Notice of Withdrawal Filed by: Third Party Defendant Oliva, Henry
04/27/2018	 Notice of Withdrawal Filed By: Counter Claimant Martinez, Rosie <i>Notice of Withdrawal of Attorney</i>
03/02/2018	 Notice of Change of Address Filed By: Third Party Defendant Oliva, Henry <i>Notice of Change of Address</i>
02/01/2018	 Notice of Withdrawal Filed by: Counter Claimant Martinez, Rosie <i>Notice of Withdrawal of Attorney</i>
01/25/2018	 Order for Family Mediation Center Services <i>Order for Family Mediation Center Services</i>
01/22/2018	 Notice Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Notice Of Affidavit Of Attempts For Henry Oliva</i>
01/22/2018	 Notice Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Notice of non-opposition to plaintiff's verified motion to amend the complaint for custody, to</i>

CASE SUMMARY

CASE NO. D-15-515892-C

establish joint legal and joint physical custody, to set aside the custody decree, to modify custody, for child support, and for attorney s fees and costs.

01/19/2018	 Financial Disclosure Form <i>Financial Disclosure Form</i>
12/18/2017	 Affidavit of Service Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Affidavit Of Service</i>
11/02/2017	 Motion Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Pltf's Motion to Join Henry Oliva as a Defendant, For The Limited Purpose of Determining Paternity of the Minor Child, Alan Oliva.</i>
11/01/2017	 Motion Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Pltf's Motion to Join Henry Oliva as a Deft, for the Limited Purpose of Determining Paternity of the Minor Child, Alan Oliva.</i>
11/01/2017	 Motion Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Verified Motion to Amend the Complaint for Custody, To Establish Joint Legal and Joint Physical Custody, To Set Aside the Custody Decree, To Modify Custody, For Child Support, And for Attorney s Fees And Costs.</i>
11/01/2017	 Exhibits Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Plaintiff's Exhibit Appendix</i>
11/01/2017	 Amended Filed By: Counter Defendant Avila, Ignacio, Jr. <i>First Amended Complaint For Custody</i>
03/14/2017	 Notice of Entry Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of First Amended Decree of Custody</i>
03/01/2017	 Custody Decree / Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>First Amended Decree of Custody</i>
02/13/2017	 Notice of Entry of Order Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Order Amending Stipulated Decree of Custody Filed July 22, 2016.</i>
02/08/2017	 Order Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Order Amending Stipulated Decree of Custody Filed July 22, 2016</i>
01/26/2017	 Ex Parte Application Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Ex Parte Application to Amend Stipulated Decree of Custody</i>
07/28/2016	 Notice of Change of Address Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Change of Address</i>
07/25/2016	 Notice of Entry of Decree Party: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Stipulated Decree of Custody</i>
07/22/2016	 Custody Decree / Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Stipulated Decree of Custody</i>

















CASE SUMMARY

CASE NO. D-15-515892-C

07/12/2016	 Notice of Entry of Order Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Order from February 23, 2016 Hearing</i>
06/28/2016	 Order Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Order from February 23, 2016 Hearing</i>
04/29/2016	 Notice of Attorney Lien Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Claim of Attorney's Lien</i>
02/29/2016	 Notice of Entry of Order Filed By: Counter Claimant Martinez, Rosie <i>Notice of Entry of Order to Withdraw</i>
02/25/2016	 Order Granting Filed by: Counter Claimant Martinez, Rosie <i>Order</i>
02/18/2016	 Application Filed By: Counter Claimant Martinez, Rosie <i>Application for Zoom Order on Gayle Nathan's Motion to Withdraw</i>
02/18/2016	 Application Filed By: Counter Claimant Martinez, Rosie <i>Application for Zoom Order on Gayle Nathan's Motion to Withdraw</i>
02/18/2016	 Certificate of Service Filed by: Counter Claimant Martinez, Rosie <i>Amended Certificate of Service on Gayle Nathan's Motion to Withdraw filed Feb 3 2016</i>
02/17/2016	 Pre-trial Memorandum Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Plaintiff's Pre Trial Memorandum</i>
02/09/2016	 Certificate of Service Filed by: Counter Claimant Martinez, Rosie <i>Certificate of Service (Gayle Nathan's Motion to Withdraw)</i>
02/09/2016	 Financial Disclosure Form Filed by: Counter Claimant Martinez, Rosie <i>Defendant's Financial Disclosure Form</i>
02/03/2016	 Motion Filed By: Counter Claimant Martinez, Rosie <i>Gayle Nathan's Motion to Withdraw as Counsel for Defendant Rosie Martinez</i>
01/08/2016	 Receipt of Copy Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Receipt of Copy</i>
12/22/2015	 Notice of Entry of Order Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Order from November 6, 2015 Hearing</i>
12/04/2015	 Order Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Order from November 5, 2015 Hearing</i>
11/12/2015	 Trial Management Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Settlement Conference and/or Evidentiary Hearing and/or Trial Management Order</i>

CASE SUMMARY

CASE NO. D-15-515892-C

11/05/2015	 Order for Family Mediation Center Services <i>Order for Family Mediation Center Services</i>
10/21/2015	 Notice of Entry Filed By: Counter Claimant Martinez, Rosie <i>Notice of Entry on Order Shortening Time on Motion to Withdraw and Order</i>
10/14/2015	 Ex Parte Application for Order Party: Counter Claimant Martinez, Rosie <i>Ex Parte Motion for Order Shortening Time On Motion to Withdraw</i>
10/12/2015	 Motion Filed By: Counter Claimant Martinez, Rosie Party 2: Counter Defendant Avila, Ignacio, Jr. <i>Deft's Attorney Motion to Withdraw as Counsel</i>
09/01/2015	 Order for Family Mediation Center Services
09/01/2015	 Stipulation and Order Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Stipulation and Order to Continue Case Management Conference, Plaintiff's Motion and Defendant's Countermotion</i>
08/25/2015	 Notice of Entry of Stipulation and Order Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Notice of Entry of Stipulation and Order for Paternity Testing</i>
08/17/2015	 Financial Disclosure Form Filed by: Counter Defendant Avila, Ignacio, Jr. <i>General Financial Disclosure Form</i>
08/14/2015	 Substitution of Attorney Filed By: Counter Claimant Martinez, Rosie <i>Substitution of Attorney</i>
08/12/2015	 Reply to Opposition Filed by: Counter Defendant Avila, Ignacio, Jr. <i>Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, child support Pursuant to Wright v. Osburn, to change Minor child's Name, and for attorney's Fees and Costs and Opposition to Defendant's Countermotion for Paternity Testing, Mediation, for primary Physical Custody and Defined Visitation, and for an Order for Child Support, Attorney's Fees and Other Related Relief</i>
08/12/2015	 Certificate of Mailing Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Certificate of Mailing</i>
08/07/2015	 Stipulation and Order Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Stipulation and Order for Paternity Testing</i>
07/31/2015	 Reply to Counterclaim Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Reply to Counterclaim</i>
07/27/2015	 NRCP 16.2 Case Management Conference Filed by: Counter Defendant Avila, Ignacio, Jr. <i>NRCP 16.2 Case Management Conference</i>
07/23/2015	 Answer and Counterclaim - Divorce, Annulment, Separate Maint Filed by: Counter Claimant Martinez, Rosie <i>Answer to Complaint for Custody and Counterclaim</i>
07/23/2015	 Opposition and Countermotion

CASE SUMMARY

CASE NO. D-15-515892-C

Filed By: Counter Claimant Martinez, Rosie

Opposition to Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, Child Support Pursuant to Wright v. Osburn, to Change the Minor Child's Name and for Attorney's Fees and Costs and Countermotion for an Order for Paternity Testing; for Mediation; for Primary Physical Custody and a Defined Visitation and for an Order for Child Support, Attorney's Fees and Other Related Relief

07/13/2015



Certificate of Mailing

Filed By: Counter Defendant Avila, Ignacio, Jr.
Certificate of Mailing

07/10/2015



Motion

Filed By: Counter Defendant Avila, Ignacio, Jr.
Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, Child Support Pursuant to Wright v. Osburn, to change Minor child's Name, and for Attorney's Fees and Costs

07/10/2015



Notice

Filed By: Counter Claimant Martinez, Rosie
Notice of Counsel

07/06/2015



Affidavit of Service

Filed By: Counter Defendant Avila, Ignacio, Jr.
Affidavit of Service

06/08/2015



Joint Preliminary Injunction

Filed by: Counter Defendant Avila, Ignacio, Jr.
Joint Preliminary Injunction

06/08/2015



Summons Issued Only

Filed by: Counter Defendant Avila, Ignacio, Jr.
Summons

06/03/2015



Complaint for Custody

Filed by: Counter Defendant Avila, Ignacio, Jr.
Complaint for Custody, Visitation and Child Support

DISPOSITIONS

09/21/2018

Judgment (Judicial Officer: Elliott, Jennifer)
Judgment (\$1,000.00, In Full , Attorneys Fees)

HEARINGS

05/26/2021

Return Hearing (10:00 AM) (Judicial Officer: Cutter, Nadin)
RETURN HEARING RE: FMC MEDIATION AND NAME CHANGE OF CHILD

04/16/2021



Evidentiary Hearing (10:00 AM) (Judicial Officer: Cutter, Nadin)
re: paternity

MINUTES

Decision Made;

Journal Entry Details:

In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the BlueJeans application. Attorney Kimber Laux, Attorney Astasia Lucas and Attorney Theodore Medlyn were also present via VIDEO CONFERENCE through the BlueJeans application. Attorney Laux stated the matter was remanded back to District Court by the Supreme Court for further paternity findings. COURT NOTED the results of the paternity test show Ignacio Avila, Jr. is the Father to both of the minor children named in this action. Attorney Medlyn stated he sent a spreadsheet opposing Counsel with a proposed visitation schedule, but the Parties have not been able to reach an agreement. Attorney Laux stated she was under the impression today's hearing was regarding paternity only. Discussion regarding the matters of paternity and custody to be heard today. Opening statements made by Counsel. Sworn testimony and Exhibits stipulated to and/or admitted (see worksheet). Closing arguments by all Parties. At 11:50 a.m., COURT ADMONISHED Mother about lying to the Court when questioned about who she was speaking to. COURT NOTED Mother initially told the Court she was speaking to her cat and then she was speaking to "no one" when he was

CASE SUMMARY

CASE NO. D-15-515892-C

actually speaking to her boyfriend, Oscar. COURT NOTED Henry Oliva is now considered a third party in this action. Should Mr. Oliva choose to pursue visitation with minor child Alan, it would be similar to Grandparent visitation. COURT ENCOURAGED Ignacio Avila, Jr. to allow minor child, Alan, to spend time with Mr. Oliva and his half brother each Friday while he is at work. COURT STATED its finding and ORDERED the following: 1. COURT FINDS Ignacio Avila, Jr. is the biological and legal Father of Alan. 2. Alan's BIRTH CERTIFICATE shall be AMENDED to list Ignacio Avila, Jr. as Father. Ignacio Avila, Jr. shall obtain two (2) original certified copies of the amended birth certificate and pay for all costs. Ignacio Avila, Jr. shall provide one (1) of the copies to Mother. 3. The REQUEST for FRAUD against Henry Oliva shall be DENIED. 4. Mother and Ignacio Avila, Jr. shall have JOINT PHYSICAL CUSTODY of the minor children. Ignacio Avila, Jr. shall have the children from Thursday at 2:00 p.m. through Sunday at 8:00 p.m. Mother shall have the children from Sunday at 8:00 p.m. through Thursday at 2:00 p.m. Mother and Ignacio Avila, Jr. shall communicate regarding the things Alan will need while he is in the care of Ignacio Avila, Jr. 5. Mother and Ignacio Avila, Jr. shall follow the DEFAULT DEPARTMENT T HOLIDAY SCHEDULE. 6. The Court REFERRED Mother and Ignacio Avila, Jr. to the Family Mediation Center (FMC) to formulate a PARENTING PLAN. Return date set for May 26, 2021. Referral executed and FILED in OPEN COURT; processed into Odyssey for both counsel to obtain. 7. Matter set for a RETURN HEARING RE: FMC MEDIATION AND NAME CHANGE OF MINOR CHILD, ALAN for May 26, 2021 at 10:00 a.m. Attorney Laux shall prepare the order.;

SCHEDULED HEARINGS

Return Hearing (05/26/2021 at 10:00 AM) (Judicial Officer: Cutter, Nadin)

RETURN HEARING RE: FMC MEDIATION AND NAME CHANGE OF CHILD

12/01/2020 **CANCELED Opposition & Countermotion** (9:00 AM) (Judicial Officer: Brown, Lisa)


Vacated

Defendant's Henry Oliva's Opposition to Pltf's Motion for Reconsideration of the Order Filed August 17, 2020, for Attorney's Fees and costs, and for Other Related relief in the Above entitled Matter and Countermotion for Attorney's Fees

12/01/2020 **CANCELED Motion** (9:00 AM) (Judicial Officer: Brown, Lisa)

Vacated

Plaintiff's Motion for Reconsideration of the Order Filed August 17, 2020, for Attorney's Fees and Costs, and for Other Related Relief

11/25/2020  **Minute Order** (7:00 AM) (Judicial Officer: Brown, Lisa)

Minute Order - No Hearing Held;


Journal Entry Details:

MINUTE ORDER-NO HEARING HELD This matter is scheduled for hearing on December 1, 2020 on Plaintiff's Motion for Reconsideration of the Order filed on August 17, 2020. This Court exercises authority granted it pursuant to EDCR 1.90(b)(1) to manage its docket in an efficient and effective manner and pursuant to EDCR 2.23(c) to decide matters without recourse to oral argument. Having reviewed the papers and pleadings before it and, good cause appearing, this Court issues its findings and orders. EDCR 5.513(a) requires a motion for reconsideration be filed within 14 calendar days after service of notice of entry of order. On August 17, 2020, an Order from June 23, 2020 hearing was filed. On October 9, 2020, or fifty-three (53) days later, Plaintiff filed his Motion for Reconsideration of the written order. Accordingly, the Court FINDS Plaintiff's Motion for Reconsideration is untimely filed and, therefore, DENIED. Accordingly, the Court ORDERS the December 1, 2020 hearing VACATED. CLERK'S NOTE: a copy of this minute order has been provided to parties. dg;

10/29/2020 **CANCELED Motion** (10:00 AM) (Judicial Officer: Brown, Lisa)

Vacated

Defendant Henry Oliva's First Amended Motion to Amend an Order or in the Alternative Correct Omissions in the Order

10/27/2020  **Minute Order** (8:00 AM) (Judicial Officer: Brown, Lisa)

Minute Order - No Hearing Held;

Journal Entry Details:

MINUTE ORDER-NO HEARING HELD NRCP 1 and EDCR 1.10 mandate procedures in district court shall be administered to secure speedy, efficient and inexpensive determinations in every action. EDCR 2.23(c) further grants this Court discretion to decide matters on the pleadings before it without recourse to oral argument. Defendant, Henry Oliva's, First Amended Motion to Amend an Order et al. was filed on 9-15-20. The Certificate of Service shows service on Ms. Piroozi, Esq. and Rosie Martinez on 9-15-20. To date, no opposition has been filed. EDCR 5.503 states in part: Failure of an opposing party to serve and file a written opposition may be construed as an admission that the motion is meritorious and a consent that

CASE SUMMARY

CASE NO. D-15-515892-C

it be granted. For good cause shown, the Motion is GRANTED. The hearing set on 10-29-20 at 10 a.m. is VACATED. CLERK'S NOTE: a copy of this minute order has been provided to parties. dg ;

10/26/2020



Minute Order (9:00 AM) (Judicial Officer: Brown, Lisa)

MINUTES

Minute Order - No Hearing Held;

Journal Entry Details:

MINUTE ORDER-NO HEARING HELD This matter is set for trial on 2-8-21 at 9 a.m. This matter was set on this Court's Chambers Calendar on 10-7-20. After a review of the matter, this minute order issues. Henry Oliva filed a Motion on 8-26-20 to request that the minor children's original birth certificates be produced by the Department of Vital Statistics in discovery. Discovery is wide ranging and includes information that is reasonably calculated to lead to admissible evidence. This is a paternity dispute and the request for a copy of the original birth certificates is reasonable and relevant. It is ORDERED that the Dept. of Vital Statistics SHALL produce a copy of the minor children's original birth certificates to this Court. Upon receipt of same, this Court SHALL notify all parties and allow inspection of said documents. Upon receipt, these documents SHALL be made a confidential Court Exhibit. This is not a determination of their admissibility at trial. The Countermotion filed by Ignacio Avila, Jr. requests that the Motion filed by Henry Oliva be stricken and that he be awarded attorney's fees. This Court DENIES the Countermotion. All parties shall bear their own fees and costs. Ms. Mercer SHALL prepare the Order. CLERK'S NOTE: a copy of the minute order has been provided to counsel/parties. dg;

10/07/2020

CANCELED Opposition (9:00 AM) (Judicial Officer: Brown, Lisa)

Vacated

Plaintiff's Opposition to Intervenor Henry Oliva's Motion, et. al. and Counter Motion to Strike Intervenor's Improper Pleading, et. al.

10/07/2020

CANCELED Motion (9:00 AM) (Judicial Officer: Brown, Lisa)

Vacated

Defendant's Motion for Order to Obtain the Original Sealed Birth Certificates from the Nevada Department of Health and Human Resources, Division of Public Behavioral Health, Vital Records

08/05/2020

CANCELED Motion (9:00 AM) (Judicial Officer: Gibson, David, Jr.)

Vacated

Deft Henry Oliva's Motion To Continue Hearing

07/31/2020



Minute Order (12:30 PM) (Judicial Officer: Brown, Lisa)

Minute Order - No Hearing Held;

Journal Entry Details:

*MINUTE ORDER - NO HEARING This matter is scheduled for Chambers review on August 5, 2020 on a non-joined third party Motion to Continue June 23, 2020 hearing. The Court FINDS the June 23, 2020 hearing went forward in the previously assigned Department. Therefore, the Court FINDS the June 22, 2020 Motion to Continue is MOOT. Accordingly, the Court ORDERS the August 5, 2020 Chambers matter VACATED. *CLERK'S NOTE: Minute order was distributed to the parties via e-mail./kh 7-31-2020;*

06/23/2020



All Pending Motions (10:00 AM) (Judicial Officer: Hardcastle, Gerald W.)

Matter Heard; Minutes in the all pending

Journal Entry Details:


RETURN HEARING: RE: PATERNITY TEST...MOTION: DEFENDANT'S MOTION AND NOTICE OF MOTION TO MODIFY CHILD SUPPORT AND/ OR SPOUSAL SUPPORT...OPPOSITION & COUNTERMOTION: PLAINTIFF'S OPPOSITION TO MOTION AND NOTICE OF MOTION TO MODIFY CHILD SUPPORT AND/OR SPOUSAL SUPPORT AND COUNTER-MOTION FOR MODIFICATION OF CUSTODY; TO AWARD PLAINTIFF PRIMARY PHYSICAL CUSTODY OF THE MINOR CHILD BASED UPON CHANGED CIRCUMSTANCES; FOR JOINT LEGAL CUSTODY TO REMAIN STATUS QUO; TO SET CHILD SUPPORT; TO AWARD PLAINTIFF THE TAX EXEMPTION; FOR SPECIFIC VISITATION TO DEFENDANT; FOR MANDATORY MEDIATION; FOR ATTORNEY'S FEES AND COSTS; AND FOR OTHER RELATED RELIEF Due to Governor Sisolak's Stay Home for Nevada directive, Plaintiff/Dad (natural father) his Attorney of Record Arezou H. Pirooz, Defendant/Mom appeared in a pro se manner along with Henry Oliva (a 3rd party) whom was (mom's live-in boyfriend) was also present along with Attorney Michelle Mercer. All parties and counsel appeared via bluejeans equipment. Upon the matter being called, the Court noted the Supreme Courts Ruling and the Order as to issues of paternity from the hearing held on 9-

CASE SUMMARY


CASE NO. D-15-515892-C


21-2018. The Court further noted Plaintiff/ Ignacio Avila is the biological father of the minor child. Attorney Mercer advised the Court as to her concerns regarding Henry Oliva not being noticed as to the hearing. Counsel further advised the Court there has never been any pleadings filed against Mr. Henry Oliva. Attorney Piroozzi stated concerns as to Mr. Henry Oliva filing a motion and being a third (3rd) party in this proceedings, Counsel further expressed concerns as to Mr. Henry Oliva submitting a fraudulent DNA TEST indicating he was the father of the minor child. The Court noted concerns as to both children being appointed an Guardian Ad Litem. Further discussion as to Defendant's Motion and Plaintiff/Dad's Opposition and Countermotion. **THE COURT FINDS** Mr. Henry Oliva was not given notice and opportunity to be heard on the paternity as to Jazlynn. **THE COURT ORDERED**, The **COURTS ORDER** from the **HEARING HELD** on 9-21-2018 shall be **SET-ASIDE**. On the **ISSUE** of **PATERNITY** the **HEARING** shall be for **BOTH CHILDREN**. Contact shall be made with the **CHILDREN'S ATTORNEY'S PROJECT** as soon as possible. Plaintiff/Ignacio Avila Jr. shall pay the **GUARDIAN AD LITEM** fees. Issues as to the **FEES** for the **GUARDIAN AD LITEM** shall be **DISCUSSED** at **TIME** of **TRIALS**. **NON-JURY TRIAL SET** for 8-31-2020 at 9:00 am. re: paternity. Attorney Mercer shall prepare the order of the court.;

06/23/2020 **Return Hearing** (10:00 AM) (Judicial Officer: Hardcastle, Gerald W.)
re: Paternity Test
Matter Heard;

06/23/2020  **Opposition & Countermotion** (10:00 AM) (Judicial Officer: Hardcastle, Gerald W.)
Plaintiff's Opposition to Motion and Notice of Motion to Modify Child Support and/or Spousal Support And Counter-Motion for Modification of Custody; To Award Plaintiff Primary Physical Custody of the Minor Child Based Upon Changed Circumstances; For Joint Legal Custody to Remain Status Quo; To Set Child Support; To Award Plaintiff the Tax Exemption; For Specific Visitation to Defendant; For Mandatory Mediation; For Attorney's Fees and Costs; And For Other Related Relief
Non Jury Trial;

06/23/2020 **Motion** (10:00 AM) (Judicial Officer: Hardcastle, Gerald W.)
Defendant's Motion and Notice of Motion to Modify Child Support and/or Spousal Support
Non Jury Trial;

04/02/2020  **Minute Order** (11:15 AM) (Judicial Officer: Gibson, David, Jr.)
Minute Order - No Hearing Held;
Journal Entry Details:
MINUTE ORDER: NO HEARING HELD AND NO APPEARANCES Correction to Minute Order from 3/20/20: Pursuant to Supreme Court of Nevada case #77242 having remanded matters back to District Court, the **COURT ORDERS**: A referral for Paternity testing shall be re-issued to determine if Plaintiff, Ignacio Avila, Jr., is the natural father of the minor child, Alan Oliva, born 10/18/2011. Defendant, Rosie Martinez, shall present the minor child, Alan Oliva, for testing in accordance with the referral. Parties are Ordered to schedule specimen collection within the next seven (7) days. The **RETURN HEARING** on the Paternity Test Results on June 23, 2020 at 10:00 AM shall **STAND**. **COURT FURTHER ORDERS**: Defendant's Motion and Plaintiff's Opposition and Countermotion currently set for June 23, 2020 at 10:00 AM shall **STAND**. **CLERK'S NOTE**: Court Clerk emailed a copy of this Minute Order along with the referral for Paternity Testing on 4/2/20 to counsel and Defendant at their email addresses on file as follows: apiroozzi@piroozzilawgroup.com and rose_n_vegas@yahoo.com. (ag);

03/20/2020  **Minute Order** (7:30 AM) (Judicial Officer: Gibson, David, Jr.)
Minute Order - No Hearing Held;
Journal Entry Details:
MINUTE ORDER- NO HEARING HELD AND NO APPEARANCES Pursuant to Supreme Court of Nevada case #77242 having remanded matters back to District Court, the **COURT ORDERS**: A referral for Paternity testing shall be issued to determine if Plaintiff, Ignacio Avila, Jr., is the natural father of the minor child, Jazlynn Rose Martinez-Avila (FKA Jazlynn Rose Martinez-Olivia). Defendant, Rosie Martinez, shall present the minor child, Jazlynn Rose Martinez-Avila (FKA Jazlynn Rose Martinez-Olivia), for testing in accordance with the referral. Parties are Ordered to schedule specimen collection within the next seven (7) days. This matter shall be set for a **RETURN HEARING** on the Paternity Test Results on June 23, 2020 at 10:00 AM. As a matter of Judicial economy, Defendant's Motion and Plaintiff's Opposition and Countermotion currently set for April 1, 2020 at 9:00 AM shall be **RESET** to June 23, 2020 at 10:00 AM. **CLERK'S NOTE**: Court Clerk emailed a copy of this Minute Order along with the referral for Paternity Testing on 3/20/20 to counsel and Defendant at

CASE SUMMARY

CASE NO. D-15-515892-C

their email addresses on file as follows: apiroozi@piroozilawgroup.com and rose_n_vegas@yahoo.com. (ag) ;

09/11/2018



All Pending Motions (10:00 AM) (Judicial Officer: Hardcastle, Gerald W.)

MINUTES

Matter Heard;

Journal Entry Details:

PLAINTIFF'S MOTION TO RECONSIDER THE ORDER ENTERED June 20, 2018...COUNTER-DEFENDANT HENRY OLIVA'S OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER THE ORDER ENTERED June 20, 2018; AND OPPOSITION TO PLAINTIFF'S TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS AND COUNTER-DEFENDANT'S MOTION FOR ATTORNEY'S FEES AND COSTS Steven Yarmy, Bar #8733, present on behalf of Henry Oliva, putative father. Court noted it reviewed the motion and the underlying decision, and the COURT FINDS that Judge Elliott carefully considered the facts and applied the law in issuing her decision, and this Court is not going to interfere with that decision. Based on the foregoing, COURT ORDERED, Plaintiff's Motion to Reconsider the Order entered June 20, 2018 is DENIED. ATTORNEY'S FEES are awarded in favor of Defendant against Plaintiff in the amount of \$1,000.00. This amount is REDUCED TO JUDGMENT, collectible by all lawful means. Mr. Yarmy shall prepare the Order from today's hearing; Ms. Piroozi shall review and sign off.;

09/11/2018

Opposition & Countermotion (10:00 AM) (Judicial Officer: Hardcastle, Gerald W.)

Events: 08/14/2018 Opposition and Countermotion

Counter Deft Henry Oliva's Opposition to Motion to Reconsider the Order Entered June 20, 2018; and Opposition to Pltf Motion for Atty's Fees and Costs and Counter-Deft's Motion for Atty's Fees and Costs

Granted;

09/11/2018

Motion (10:00 AM) (Judicial Officer: Hardcastle, Gerald W.)

Events: 07/06/2018 Motion

Pltfs-Motion To Reconsider The Order Entered June 20, 2018

Denied;

03/29/2018

CANCELED Return Hearing (9:30 AM) (Judicial Officer: Elliott, Jennifer)

Vacated - per Clerk

FMC (Mediation)

03/29/2018



Minute Order (7:30 AM) (Judicial Officer: Elliott, Jennifer)

MINUTES

Minute Order - No Hearing Held;

Journal Entry Details:

The Court in review of its March 29, 2018 calendar notes the following: 1. This case was initiated by Plaintiff's complaint for custody of Jazlynn Rose Martinez (DOB 10/25/13). 2. Plaintiff admitted that through his own "self-help" DNA test, he found out on January 20, 2017, that Defendant's child Alan (DOB 10/18/11) was also his biological son. 3. Thereafter, the First Amended Decree of Custody, drafted by Plaintiff's counsel, was filed March 1, 2017 wherein only the minor child Jazlyn was included as a child born to Plaintiff and Defendant. 4. Plaintiff filed an Amended Complaint for Custody November 1, 2017 which included the minor child Alan (DOB 10/18/11). 5. At the January 25, 2018 hearing, Plaintiff was represented by Arezou Piroozi, Esq., Defendant was represented by Soraya Veiga, Esq. (unbundled) and Henry Oliva was represented by Steven Yarmy, Esq. (unbundled). 6. The Court Ordered that Henry Oliva be added as a third party Defendant in this case. 7. After listening to argument at the January 25, 2018 hearing, the Court summarized the relevant paternity law into the record as reiterated below. 8. The Court Found and Ordered that the child was over six (6) years of age, that Henry Oliva was the named father on the birth certificate, that the child had been living with Defendant Rosie Martinez and Henry Oliva since his birth, that Plaintiff's "self-help" positive DNA test was provided to Plaintiff PRIOR to his attorney having drafted the First Amended Decree of Custody filed March 1, 2017 wherein only the minor child Jazlynn was included as a child born to Plaintiff and Defendant and that absent clear and convincing evidence of fraud on Defendant's part, or absent a stipulation between the parties, his request for Court-Ordered paternity tests of himself and Henry Oliva were denied. 9. Plaintiff advised that he had taken Alan on visitation many times when he had Jazlynn for visitation. The Court advised that he may have established a meaningful relationship with the child under NRS 125C.050 and the parties could mediate a stipulated schedule if they desired. 10. Plaintiff thereafter advised the Court that Mr. Oliva had recently text of a portion of a positive DNA test without any named father designed to make Plaintiff believe that he was the father of the minor

CASE SUMMARY

CASE NO. D-15-515892-C

child Alan. The Court made no findings as to this text. 11. The Court sent all three (3) parties to mediation and Ordered that if there was an impasse, Plaintiff's counsel shall file a legal brief if Plaintiff felt he had clear and convincing evidence of fraud that could be imputed to Defendant pursuant to paternity law. 12. The parties were Ordered not to discuss any part of this litigation with or in the presence of the children pursuant to EDCR 5.301. 13. The Court is in receipt of a March 1, 2018 letter from the Family Mediation Center (FMC) stating that the parties reached an impasse. 14. No further briefing has been filed in this case. 15. Plaintiff has not filed a motion for a meaningful relationship with the minor child Alan, which the Court advised he may be able to establish, if it is true that he had visitation with Alan many times when he had his visitation with Jazlyn. 16. Ms. Piroozi failed to file the Order from the January 25, 2018 hearing and thus the Court files this Order. The Court FINDS that pursuant to NRS 440.610, the facts listed in the child's birth certificate become prima facie evidence of the facts stated therein. Thus, a person listed as the father on the birth certificate is presumed to be the father of the child if paternity becomes disputed. NRS 440.610 Certificate as prima facie evidence. Each certificate, as provided for in this chapter, filed within 6 months after the time prescribed for their filing, shall be prima facie evidence of the facts therein stated. Data pertaining to the father of a child is such evidence if the alleged father is, or becomes, the husband of the mother in a legal marriage; if not, the data pertaining to the father of a child is not such evidence in any civil or criminal proceeding adverse to the interests of the alleged father, or of his heirs, devisees or other successors in interest, if the paternity is controverted. The following statutory presumption applies to Paternity findings: N.R.S. 126.051 Presumptions of Paternity 1. A man is presumed to be the natural father of a child if: (d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child. "Under the statutory scheme for determining paternity, the district court is not compelled to determine, on the basis of deoxyribonucleic acid (DNA) test, that a man is or is not a child's father as a matter of law, N.R.S. 126.051, 126.121. Love v. Love, 1998, 959 P.2d 523, 114 Nev. 572. The statutory scheme for determining paternity clearly reflects the legislature's intent to allow non-biological factors to become critical. Love v. Love, 1998, 959 P.2d 523, 114 Nev. 572. "The Legislature has made it clear that although it is now possible to determine biological paternity with certainty, biology is not the predominant consideration in determining parental responsibility once a child has reached his or her third year of life, (In re Marriage of B., supra, 124 Cal.App.3d at p. 531, 177 Cal.Rptr. 429.) In re Marriage of Freeman, 45 Cal. App. 4th 1437, 1449, 53 Cal. Rptr. 2d 439, 447 (1996). "The state has an interest in preserving and protecting the developed parent-child and sibling relationships which give young children social and emotional strength and stability. [Citation omitted.] This interest is served notwithstanding termination of the mother's marital relationship with the presumed father. (Susan H. v. Jack S., supra, 30 Cal.App.4th at pp. 1442 1443, 37 Cal.Rptr.2d 120.), In re Marriage of Freeman, 45 Cal. App. 4th 1437, 1450, 53 Cal. Rptr. 2d 439, 448 (1996). Biology will only control a determination of paternal responsibility for a limited period early in a child's life and thereafter the predominant consideration must be the nature of the presumed father's social relationship with the child. In re Marriage of Freeman, 45 Cal. App. 4th 1437, 1446, 53 Cal. Rptr. 2d 439, 446 (1996). Under California Statutory Law, In 1980 the Legislature added what is now section 7541 providing for rebuttal of the presumption by blood testing requested within two years following a child's birth, In re Marriage of Freeman, 45 Cal. App. 4th 1437, 1444, 53 Cal. Rptr. 2d 439, 444-45 (1996). After two (2) years absent clear and convincing evidence of fraud or mistake of fact, a request for a paternity test may be denied. "In the case of an older child the familial relationship between the child and the man purporting to be the child's father is considerably more palpable than the biological relationship of actual paternity. A man who has lived with a child, treating it as his son or daughter, has developed a relationship with the child that should not be lightly dissolved and upon which liability for continued responsibility to the child might be predicated. This social relationship is much more important, to the child at least, than a biological relationship of actual paternity, In re Marriage of Freeman, 45 Cal. App. 4th 1437, 1445, 53 Cal. Rptr. 2d 439, 445 (1996). Plaintiff is also barred by claim preclusion, which is a defense that prevents the re-litigation of a previously resolved claim. Elizondo v. Hood Mach., Inc., 129 Nev., Adv. Op. 84, 312 P.3d 479, 483 (2013). Precluding the re-litigation of issues such as paternity and other valid judgments, "protect[s] the finality of decisions and prevent[s] the proliferation of litigation" that could have been brought in the prior action. Holt v. Reg'l Tr. Servs. Corp., 127 Nev., Adv. Op. 80, 266 P.3d 602, 605 (2011) (internal quotations omitted). This doctrine can apply to divorce decrees incorporating marital settlement agreements that resolve issues of paternity and child support obligations. Love v. Love, 114 Nev. 572, 575, 959 P.2d 523, 526 (1998); Willerton v. Bassham, 111 Nev. 10, 14, 889 P.2d 823, 825 (1995). Claim preclusion applies when "(1) the final judgment is valid, ... (2) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case, and (3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, or the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a good reason for not having done so." Weddell

CASE SUMMARY

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v. Sharp, 131 Nev., Adv. Op. 28, 350 P.3d 80, 85 (2015). The Court finds in the case at bar that Plaintiff is precluded from raising this claim based on judgments filed December 14, 2015, June 28, 2016, July 22, 2016, February 8, 2017 and March 1, 2017. Although there is a valid policy concern about the unfairness of being obligated to support someone else's child, however, there is a balance between that policy interest and claim preclusion's policy of protecting the finality of judgments as it carves out an exception to claim preclusion for previous judgments that were obtained by extrinsic fraud. (See Love, 114 Nev. at 576, 959 P.2d at 526.) (Emphasis added.) Where there is an older child (age 3 or older), absent clear and convincing evidence of fraud, the policy of the law in determining paternity falls on the side of societal interests in protecting children by providing consistency, security, support and maintaining the known family structure. This may include the attachment and bond they have developed as family members which is deemed more compelling than biology when a man has been standing in the role as the child's father, holding the child out as his own, and they have developed an identity as parent and child--as a family. The child in this case is six and a half (6.5) years old; the time to contest paternity has long past. The Court FINDS that paternity cannot be challenged as the child is now six and one half (6.5) years old and Plaintiff has failed to challenge the child's paternity in a timely manner in the instant case. The Court ORDERS that other than joining Henry Oliva as a necessary party, Plaintiff's MOTION SHALL BE DENIED and the case shall be closed. The Court FURTHER ORDERS that parties SHALL NOT DISCUSS this case with the minor children. Children can suffer hurt and loss when a parent determines later in their minority to contest paternity. The parties are hereby put on notice that they are not to discuss this or any other Family Court litigation with the minor child pursuant to EDCR 5.301 below: EDCR 5.301 Confidentiality, best interests of children. Absent a written order of the court to the contrary, all lawyers, litigants, witnesses or other parties privy to matters being heard by the family division are prohibited from: (a) Discussing the issues, proceedings, pleadings, or papers on file with the court with the minor children of the litigants; (b) Allowing any minor child to review the record of the proceedings before the court, whether in the form of transcripts, audio cassettes or audio-visual tapes; or (c) Leaving such materials in a place where it is likely or foreseeable that a child will access those materials. The Clerk shall remove the matter from the Court's calendar set March 29, 2018 at 9:30 a.m. pursuant to EDCR 2.23. Department L JEA shall advise parties and counsel there shall be no appearances and this case has been closed. Should a final Order be desired, Ms. Piroozi may draft an Order from this minute order and both Ms. Martinez and Mr. Oliva shall review and sign off or waive signature. ;

01/25/2018



All Pending Motions (9:00 AM) (Judicial Officer: Elliott, Jennifer)

MINUTES

Matter Heard;

Journal Entry Details:

PLAINTIFF'S VERIFIED MOTION TO AMEND THE COMPLAINT FOR CUSTODY, TO ESTABLISH JOINT LEGAL AND JOINT PHYSICAL CUSTODY, TO SET ASIDE THE CUSTODY DECREE, TO MODIFY CUSTODY, FOR CHILD SUPPORT, AND FOR ATTORNEY'S FEES AND COSTS...PLAINTIFF'S MOTION TO JOIN HENRY OLIVA AS A DEFENDANT, FOR THE LIMITED PURPOSE OF DETERMINING PATERNITY OF THE MINOR CHILD, ALAN OLIVA Soraya Veiga, Bar #7944, present on behalf of Defendant in an UNBUNDLED capacity. Steven Yarmy, Bar #8733, present on behalf of Henry Oliva in an UNBUNDLED capacity. Plaintiff, Defendant, and Henry Oliva sworn and testified. Argument by Ms. Piroozi, Ms. Veiga, and Mr. Yarmy regarding Plaintiff's Motions and allegations of fraud. Plaintiff alleged Mr. Oliva presented with a false DNA test. Court read relative case law on the record. COURT ORDERED, the Default filed on 1/24/18 shall be STRICKEN from the record. Henry Oliva shall be added as a third party Defendant to this case. Court is not ordering a Paternity Test absent a STIPULATION. Parties REFERRED to Family Mediation Center (FMC) for MEDIATION. A Return Hearing is SET for 3/29/18 at 9:30 AM. Order for Family Mediation Center Services FILED IN OPEN COURT. If parties are unable to reach an agreement, counsel shall file a brief as to whether fraud can be imputed to the Defendant when the fraud was committed by a person outside of the case. Counsel may further request an earlier return date. The parties shall keep each other apprised of any CHANGE in ADDRESS, TELEPHONE NUMBER, and EMPLOYMENT, ten days prior to making the change. In addition, the change in address and telephone number shall be filed with the Clerk's Office. Pursuant to EDCR 5.301, none of the parties shall discuss any part of this litigation with the children or in the presence of the children. Ms. Piroozi shall prepare the Order from today's hearing; Ms. Veiga and Mr. Yarmy shall have 7 judicial days to review and sign off.;

01/25/2018

Motion (9:00 AM) (Judicial Officer: Elliott, Jennifer)

Events: 11/02/2017 Motion

Pltf's Motion to Join Henry Oliva as a Defendant, For The Limited Purpose of Determining

CASE SUMMARY

CASE NO. D-15-515892-C

Paternity of the Minor Child, Alan Oliva.
Referred to Family Mediation;

01/25/2018 **Motion** (9:00 AM) (Judicial Officer: Elliott, Jennifer)
Events: 11/01/2017 Motion
Pltf's Verified Motion to Amend the Complaint for Custody, To Establish Joint Legal and Joint Physical Custody, To Set Aside the Custody Decree, To Modify Custody, For Child Support, And for Attorney s Fees And Costs.
Referred to Family Mediation;


11/29/2017 **CANCELED Motion** (0:00 AM) (Judicial Officer: Elliott, Jennifer)
Vacated - per Law Clerk
Pltf's Motion to Join Henry Oliva as a Deft, for the Limited Purpose of Determining Paternity of the Minor Child, Alan Oliva.


03/08/2016 **CANCELED Evidentiary Hearing** (1:30 PM) (Judicial Officer: Elliott, Jennifer)
Vacated - per Judge
Custody (Stack #1)

03/08/2016 **CANCELED Motion for Withdrawal** (10:00 AM) (Judicial Officer: Elliott, Jennifer)
Vacated - per Clerk
Motion to Withdraw as Counsel for Defendant Rosie Martinez


02/23/2016  **Calendar Call** (11:00 AM) (Judicial Officer: Elliott, Jennifer)

MINUTES

06/28/2016  **Order**
Filed By: Counter Defendant Avila, Ignacio, Jr.
Order from February 23, 2016 Hearing
Matter Heard;
Journal Entry Details:
CALENDAR CALL The Court noted Attorney Nathan's filed a Motion to Withdraw as Attorney of Record for Defendant due to lack of cooperation. The Court further noted Ms. Nathan's Motion was granted. The Court inquired as to a settlement being reached. Upon inquiry Attorney Ghandi advised the court parties were able to reach an agreement. Parties sworn and testified. The Canvassed Plaintiff and Defendant as to the terms of the agreement. THE COURT ORDERED, Parties AGREED to keep the SCHEDULE with TEMPORARY ORDERS currently in place becoming PERMANENT ORDERS. Parties shall have JOINT LEGAL CUSTODY of the minor child. Defendant shall have PRIMARY PHYSICAL CUSTODY of the minor child. Plaintiff shall pay Defendant CHILD SUPPORT in the amount of \$400.00 per month, plus an ADDITIONAL \$50.00 per month towards CHILD SUPPORT ARREARS for a total monthly SUPPORT OBLIGATION of \$450.00 per month, until CHILD SUPPORT ARREARS are PAID IN FULL. Attorney Ghandi shall work with parties as to the ESTABLISHMENT of CHILD SUPPORT ARREARS, so that there is a date as to when Plaintiff's CHILD SUPPORT ARREARS are PAID IN FULL. The minor child's name shall be changed to JAZLYNN ROSE MARTINEZ AVILA. The minor child's BIRTH CERTIFICATE shall be AMENDED to reflect the child's name change. Defendant shall have (30) days to provide all UNCOVERED MEDICAL COSTS to Opposing Counsel. UNCOVERED MEDICAL BILLS submitted to Opposing Counsel shall be from the date of the child's birth (10-2013) through today date (2-23-2016), and include BIRTHING COSTS. Both parties shall provide MEDICAL INSURANCE COVERAGE for the minor child. Neither party shall receive an OFF-SET as to MEDICAL INSURANCE COVERAGE. Parties shall utilize Department L's Default Holiday Plan. Attorney Ghandi shall attach the Default Holiday Plan to the final Decree of Custody Order. Attorney Gayle Nathan's MOTION to WITHDRAW as ATTORNEY of RECORD shall be GRANTED. Hearing SET for 3-8-2016 shall be VACATED. Non-Jury Trial SET for 3-8-2016 shall be VACATED. Attorney Ghandi shall prepare the order of the court. Defendant shall have (7) days to review and sign off. ;

01/19/2016  **Return Hearing** (9:30 AM) (Judicial Officer: Elliott, Jennifer)
Events: 11/05/2015 Order for Family Mediation Center Services
FMC (Mediation)

MINUTES

 **Order for Family Mediation Center Services**
Order for Family Mediation Center Services
Matter Heard;
Journal Entry Details:

CASE SUMMARY

CASE No. D-15-515892-C

RETURN HEARING: FMC (MEDIATION) Upon the matter being called the court noted the agreement reached by parties. Opening remarks by Attorney Nathan who advised the court Defendant/Mom was at home with the children whom are sick. The Court noted the correction as to the minutes from the hearing held on 11-5-2015. THE COURT further noted concerns as to a settlement being reached and parties attending UNLV Mediation. THE COURT ORDERED, 1. Defendant/Mom shall file a FINANCIAL DISCLOSURE FORM (FDF). 2. Discovery shall be open. 3. Counsel shall confer as to outstanding issues prior to the use of another process. 4. Counsel shall contact Chambers if a need for an Alternative Dispute Resolution process is needed. 5. Calendar Call SET for 2-23-2016 at 11:00 am. 6. Evidentiary Hearing SET for 3-8-2016 at 1:30 pm. (stack 1);

11/05/2015



All Pending Motions (10:00 AM) (Judicial Officer: Elliott, Jennifer)

MINUTES

Matter Heard;


Journal Entry Details:

PLAINTIFF'S MOTION FOR JOINT LEGAL CUSTODY, JOINT PHYSICAL CUSTODY, CHILD SUPPORT PURSUANT TO WRIGHT V. OSBURN, TO CHANGE MINOR CHILD'S NAME, AND FOR ATTORNEY'S FEES AND COSTS...DEFENDANT'S OPPOSITION AND COUNTERMOTION FOR AN ORDER FOR PATERNITY TESTING; FOR MEDIATION; FOR PRIMARY PHYSICAL CUSTODY AND DEFINED VISITATION AND FOR AN ORDER FOR CHILD SUPPORT, ATTORNEY'S FEES AND OTHER RELATED RELIEF...CASE MANAGEMENT CONFERENCE..GAYLE NATHAN ESQ'S MOTION TO WITHDRAW Ms. Nathan represented she is staying on the case and withdrew her Motion to Withdraw as counsel for Defendant. Counsel requested a re-referral to mediation as the parties are agreeable to participating in mediation, and further requested a Trial date. Parties stipulated to paternity. COURT FINDS, paternity is established. Plaintiff is the biological father of Jazlynn Rose Olivia, born 10/25/13. Argument by counsel. Court recommended the parties participate in a parenting program. COURT ORDERED, Ms. Nathan's request to withdrawn her Motion to Withdraw is GRANTED. Pursuant to STIPULATION, parties REFERRED to Family Mediation Center (FMC) for MEDIATION. A Return Hearing is SET. Order for Family Mediation Center Services FILED IN OPEN COURT. In the interim, parties shall have TEMPORARY JOINT LEGAL CUSTODY, with Defendant having TEMPORARY PRIMARY PHYSICAL CUSTODY of the minor child. Effective 11/13/15, Plaintiff shall have VISITATION every other weekend from Friday at 12:00 PM to Sunday at 4:00 PM, and Tuesdays and Thursdays from 12:00 PM to 6:00 PM in the weeks following his weekend visitation. For this year only, Plaintiff shall have Thanksgiving Day from 9:00 AM to 1:00 PM and Christmas Day from 9:00 AM to 7:00 PM (if it is not Plaintiff's regularly scheduled visitation weekend). Absent mutual agreement thereafter, parties shall follow the Court's DEFAULT HOLIDAY SCHEDULE, a copy of which was provided to the parties IN OPEN COURT. An Evidentiary Hearing is SET for 3/8/16 at 1:30 PM (Stack #1) on the issue of CUSTODY, with a Calendar Call SET for 2/23/16 at 11:00 AM. The Department's JEA shall send a Trial Management Order to counsel with the scheduling deadlines. Parties shall co-parent via e-mail ONLY IF an issue arises that is causing conflict between the parties. The parties shall notify each other (10) days prior to any CHANGE in ADDRESS, TELEPHONE NUMBER, and/or EMPLOYMENT. In addition, the change shall be filed with the Clerk's Office. The Court is not going to order that the MINOR CHILD'S SURNAME be changed. A change will be granted only upon mutual agreement of the parties. Absent an agreement, the most the Court would consider is a hyphenated surname. Counsel shall confer and attempt resolution of this issue. Based on Plaintiff's reported gross income of \$4,639.09 per month. Plaintiff shall pay Defendant CHILD SUPPORT at the statutory maximum of \$748.00 per month, retroactive to 7/1/15. Plaintiff shall file a Financial Disclosure Form with a copy of his year-to-date wage statement attached. Defendant shall continue to provide HEALTH INSURANCE for the benefit of the minor child. Plaintiff shall reimburse Defendant monthly for his one-half share of the premium cost. Counsel shall confer and determine the cost. Any unreimbursed medical, dental, optical, orthodontic or other health related expense incurred for the benefit of the minor child is to be divided equally between the parties. Either party incurring an out of pocket medical expense for the child shall provide a copy of the paid invoice/receipt to the other party within thirty days of incurring such expense, if not tendered within the thirty day period, the Court may consider it as a waiver of reimbursement. The other party will then have thirty days from receipt within which to dispute the expense in writing or reimburse the incurring party for one-half of the out of pocket expense, if not disputed or paid within the thirty day period, the party may be subject to a finding of contempt and appropriate sanctions. Pursuant to STIPULATION, Plaintiff shall reimburse Defendant one-half of the child's birthing costs upon receiving verification of the cost. Ms. Nathan shall prepare the Order from today's hearing; Ms. Ghandi shall review and sign off. 1/19/16 9:30 AM Return Hearing: FMC (Mediation) 3/8/16 1:30 PM Evidentiary Hearing (Custody) 2/23/16 11:00 AM Calendar Call ;

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. D-15-515892-C

11/05/2015	Motion for Withdrawal (10:00 AM) (Judicial Officer: Elliott, Jennifer) Events: 10/12/2015 Motion <i>Gayle Nathan's Motion for Withdrawal</i> Withdrawn;
11/05/2015	Case Management Conference (10:00 AM) (Judicial Officer: Elliott, Jennifer) Events: 09/01/2015 Stipulation and Order Evidentiary Hearing;
11/05/2015	Opposition & Countermotion (10:00 AM) (Judicial Officer: Elliott, Jennifer) Events: 07/23/2015 Opposition and Countermotion <i>Deft's Opposition & Countermotion for an Order for Paternity Testing; for Mediation; for Primary Physical Custody and a Defined Visitation and for an Order for Child Support, Atty's Fees and Other Related Relief</i> Referred to Family Mediation;
11/05/2015	Motion (10:00 AM) (Judicial Officer: Elliott, Jennifer) Events: 07/10/2015 Motion <i>Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, Child Support Pursuant to Wright v. Osburn, to change Minor child's Name, and for Attorney's Fees and Costs</i> MINUTES  Motion Filed By: Counter Defendant Avila, Ignacio, Jr. <i>Plaintiff's Motion for Joint Legal Custody, Joint Physical Custody, Child Support Pursuant to Wright v. Osburn, to change Minor child's Name, and for Attorney's Fees and Costs</i> Referred to Family Mediation;
06/04/2015	Summons Martinez, Rosie Served: 06/16/2015

DATE	FINANCIAL INFORMATION																																																				
	<table> <tr> <td>Plaintiff Avila, Ignacio, Jr.</td><td></td></tr> <tr> <td>Total Charges</td><td>355.00</td></tr> <tr> <td>Total Payments and Credits</td><td>355.00</td></tr> <tr> <td>Balance Due as of 6/2/2021</td><td>0.00</td></tr> <tr> <td>Attorney Ghandi, Nedda</td><td></td></tr> <tr> <td>Total Charges</td><td>5.00</td></tr> <tr> <td>Total Payments and Credits</td><td>5.00</td></tr> <tr> <td>Balance Due as of 6/2/2021</td><td>0.00</td></tr> <tr> <td>Attorney Piroozzi, Arezou H.</td><td></td></tr> <tr> <td>Total Charges</td><td>139.56</td></tr> <tr> <td>Total Payments and Credits</td><td>139.56</td></tr> <tr> <td>Balance Due as of 6/2/2021</td><td>0.00</td></tr> <tr> <td>Counter Claimant Martinez, Rosie</td><td></td></tr> <tr> <td>Total Charges</td><td>241.00</td></tr> <tr> <td>Total Payments and Credits</td><td>241.00</td></tr> <tr> <td>Balance Due as of 6/2/2021</td><td>0.00</td></tr> <tr> <td>Counter Defendant Avila, Ignacio, Jr.</td><td></td></tr> <tr> <td>Total Charges</td><td>519.50</td></tr> <tr> <td>Total Payments and Credits</td><td>519.50</td></tr> <tr> <td>Balance Due as of 6/2/2021</td><td>0.00</td></tr> <tr> <td>Third Party Defendant Oliva, Henry</td><td></td></tr> <tr> <td>Total Charges</td><td>262.00</td></tr> <tr> <td>Total Payments and Credits</td><td>262.00</td></tr> <tr> <td>Balance Due as of 6/2/2021</td><td>0.00</td></tr> <tr> <td>Counter Defendant Avila, Ignacio, Jr</td><td></td></tr> <tr> <td>Registry/Trust Account-- FM Registry Balance as of 6/2/2021</td><td>500.00</td></tr> </table>	Plaintiff Avila, Ignacio, Jr.		Total Charges	355.00	Total Payments and Credits	355.00	Balance Due as of 6/2/2021	0.00	Attorney Ghandi, Nedda		Total Charges	5.00	Total Payments and Credits	5.00	Balance Due as of 6/2/2021	0.00	Attorney Piroozzi, Arezou H.		Total Charges	139.56	Total Payments and Credits	139.56	Balance Due as of 6/2/2021	0.00	Counter Claimant Martinez, Rosie		Total Charges	241.00	Total Payments and Credits	241.00	Balance Due as of 6/2/2021	0.00	Counter Defendant Avila, Ignacio, Jr.		Total Charges	519.50	Total Payments and Credits	519.50	Balance Due as of 6/2/2021	0.00	Third Party Defendant Oliva, Henry		Total Charges	262.00	Total Payments and Credits	262.00	Balance Due as of 6/2/2021	0.00	Counter Defendant Avila, Ignacio, Jr		Registry/Trust Account-- FM Registry Balance as of 6/2/2021	500.00
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CASE SUMMARY

CASE NO. D-15-515892-C

ORDR

Michael Burton, Esq.
Nevada Bar Number 14351
Kimber Laux, Esq.
Nevada Bar Number 15263
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Attorney for Plaintiff,
Ignacio Avila, Jr.

**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

IGNACIO AVILA, JR.,

Plaintiff,

vs.

ROSIE MARTINEZ and HENRY OLIVA,

Defendants.

Case Number: D-15-515892-C
Department: T

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

THIS MATTER came before the Honorable Nadin Cutter for an Evidentiary Hearing regarding the paternity of Alan Sergio Oliva ("Alan") on April 16, 2021 at 10 a.m. Present at the hearing were Plaintiff, Ignacio Avila, Jr. ("Ignacio"), represented by his attorney of record, Kimber Laux, Esq.; Defendant, Rosie Martinez ("Rosie"), in Proper Person; and Defendant, Henry Oliva ("Henry"), represented by his attorney of record, Theodore M. Medlyn, Esq.

The Court, having reviewed the papers and pleadings on file herein, and having taken evidence and testimony from trial, argument from counsel, and being duly and fully advised in the premises, issues the following findings, conclusions of law, and orders:

1 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

2 **THE COURT FINDS** that the Court cannot go outside of the law to make its decision.

3 The Court must start with the law.

4 **THE COURT FURTHER FINDS** that the parties' situation is incredibly difficult and sad,
5 but none of the things that have happened are Ignacio's fault. Ignacio is innocent in this case as
6 much as Alan is innocent in this case.

7 **THE COURT FURTHER FINDS** that pursuant to NRS 126.051(2), a paternity test that
8 was ordered by the Nevada Supreme Court, taken by Ignacio, and confirmed in this case in 2020
9 is conclusive. Ignacio Avila Jr. is conclusively the biological father and legal father of Alan.

10 **THE COURT FURTHER FINDS** that Ignacio asked Rosie about Alan's paternity after
11 the child's birth and even while Rosie was pregnant with Alan and was lied to.

12 **THE COURT FURTHER FINDS** that Ignacio confronted Rosie about Alan's paternity
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14 **THE COURT FURTHER FINDS** that at 11:50 a.m. during the parties' evidentiary
15 hearing, Rosie lied to the Court two times.

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17 to reflect the name of Alan's father as Ignacio Avila Jr.

18 **THE COURT FURTHER FINDS** that the Court does not have enough evidence to find
19 that Henry's paternity test was fraudulent. The Court does not care to go down that path.

20 **THE COURT CONCLUDES** that, with respect to Henry's Voluntary Acknowledgment
21 of Paternity ("VAP") of Alan, NRS 126.053 governs voluntary acknowledgements of paternity or
22 parentage. Under NRS 126.053(3), after the expiration of the period during which an
23 acknowledgement may be rescinded, a VAP "may not be challenged except upon the grounds of
24 fraud, duress or material mistake of fact." The burden of proof is on the person challenging the

1 Acknowledgment to establish that the Acknowledgement was signed because of fraud, duress, or
2 material mistake of fact.

3 **THE COURT FURTHER FINDS** that, here, there was either a material mistake of fact
4 or fraud when Henry signed the VAP of Alan.

5 **THE COURT FURTHER CONCLUDES** that the conclusive presumption set forth in
6 NRS 126.051(2) overcomes any VAP signed by any person that was not the child's biological
7 father.

8 **THE COURT FURTHER FINDS** that when this matter was pending in 2018, before the
9 matter was appealed, Henry and Rosie intentionally deprived Ignacio of time with Alan. That
10 withholding was affirmed in testimony by all three parties – Henry, Rosie, and Ignacio. Ignacio
11 had overnights with Alan and those overnights were suddenly taken away from him three (3) years
12 ago.

13 **THE COURT FURTHER FINDS** that not only has Ignacio missed Alan's infancy,
14 toddlerhood, and young childhood, but after there was a decision in 2018, Ignacio's visitation was
15 further restricted. The best interest factor under NRS 125C.0035 which considers "which parent is
16 more likely to allow the child to have frequent associations and a continuing relationship with the
17 noncustodial parent" incredibly favors Ignacio.

18 **THE COURT FURTHER FINDS** that Ignacio was denied the opportunity to settle this
19 matter until Alan was 6.5 years old.

20 **THE COURT FURTHER FINDS** that there is no finding of contempt against Ignacio for
21 failure to retain a guardian ad litem because no Order to Show Cause is pending and there is no
22 contempt proceeding before the Court.

23 **THE COURT FURTHER CONCLUDES** that under NRS 126.081(1), paternity actions
24 such as this are not time-barred until the minor child turns 21 years old.

THE COURT FURTHER FINDS that there is a conclusive presumption under NRS 126.051(2) that Ignacio is Alan's father.

ORDERS

IT IS HEREBY ORDERED that Ignacio is confirmed as Alan's father.

IT IS FURTHER ORDERED that Alan's name shall be changed and his birth certificate shall be amended to reflect Ignacio's last name. The child's name shall be changed to: Alan Sergio Avila. Ignacio shall bear the cost of amending Alan's birth certificate and, after the birth certificate is amended, he shall provide Rosie with an original birth certificate of her own, at his expense. The parties shall confer regarding changing Alan's middle name.

IT IS FURTHER ORDERED that Ignacio and Rosie shall have joint physical custody of Alan, with Ignacio's timeshare to begin immediately. Specifically, Ignacio shall have custody of Alan beginning Thursday at 2 p.m. and ending Sunday at 8 p.m. each week, such that Ignacio will have three overnights with Alan. Ignacio shall pick Alan up from Henry's home after the parties' evidentiary hearing ends. Ignacio and Rosie shall communicate as to any backpacks or other items that need to be exchanged between them.

IT IS FURTHER ORDERED that Ignacio is encouraged to seriously consider asking Henry to watch Alan on Fridays when Ignacio works such that Alan, Henry, and Henry Jr. can spend time together when Alan is at work.

IT IS FURTHER ORDERED that, temporarily, Ignacio and Rosie shall follow the Department T default holiday and visitation schedule. Ignacio and Rosie shall attend FMC to establish a permanent holiday and vacation timeshare.

IT IS FURTHER ORDERED that a Return Hearing from FMC Mediation and a Status Check regarding the minor child's middle name is set for May 26, 2021 at 10 a.m.

///

IT IS FURTHER ORDERED that, with respect to Alan, Henry is now considered a third party in this matter. If he would like to request third-party visitation, the Court may entertain the same. However, the visits, if any, will not be the same as the visitation Henry previously exercised with Alan. The visits, if any, will be akin to grandparent visitation.

NOTICES

The parties are subject to the provisions of NRS 31A.025 through 31A.240 which deal with the recovery of payments for the support of minor children by the welfare division of the Department of Human Resources or the District Attorney; and, that his/her employer can be ordered to withhold his/her wages or commissions for delinquent payments of child support.

If you want to adjust the amount of child support established in this order, you MUST file a motion to modify the order or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation not submitted, the child support obligation established in this order will continue until such time as all children who are subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

The parties shall submit the information required in NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare Division of the Department of Human Resources within ten (10) days from the date the Decree in this matter is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten (10) days should any of that information become inaccurate.

1 The following statutory notices regarding custody of a minor children apply to the parties:

2 A. Pursuant to NRS 125C.006, the parties are hereby placed on notice of the following:

3 1. If primary physical custody has been established pursuant to an order, judgment
4 or decree of a court and the custodial parent intends to relocate his or her residence
5 to a place outside of this State or to a place within this State that is at such a distance
6 that would substantially impair the ability of the other parent to maintain a
7 meaningful relationship with the child, and the custodial parent desires to take the
8 child with him or her, the custodial parent shall, before relocating:

9 (a) Attempt to obtain the written consent of the noncustodial parent to
10 relocate with the child; and

11 (b) If the noncustodial parent refuses to give that consent, petition the court
12 for permission to relocate with the child.

13 2. The court may award reasonable attorney's fees and costs to the custodial parent
14 if the court finds that the noncustodial parent refused to consent to the custodial
15 parent's relocation with the child:

16 (a) Without having reasonable grounds for such refusal; or (b) For
17 the purpose of harassing the custodial parent.

18 3. A parent who relocates with a child pursuant to this section without the written
19 consent of the noncustodial parent or the permission of the court is subject to the
20 provisions of NRS 200.359.

21 B. Per NRS 125C.0065, the parties are hereby placed on notice of the following:

22 1. If joint physical custody has been established pursuant to an order, judgment or
23 decree of a court and one parent intends to relocate his or her residence to a place
24 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.

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

(a) Without having reasonable grounds for such refusal; or

(b) For the purpose of harassing the relocating parent.

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

C. Per NRS 125C.0045 (6), the parties are hereby placed on notice of the following:

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR
DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY

1 D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person
2 having a limited right of custody to a child or any parent having no right of custody
3 to the child who willfully detains, conceals or removes the child from a parent,
4 guardian or other person having lawful custody or a right of visitation of the child
5 in violation of an order of this court, or removes the child from the jurisdiction of
6 the court without the consent of either the court or all persons who have the right
7 to custody or visitation is subject to being punished for a category D felony as
8 provided in NRS 193.130.

9 D. Per NRS 125C.0045 (7), the parties are hereby placed on notice of the following:

10 The parties, and each of them, are hereby placed on notice that the terms of the
11 Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague
12 Conference on Private International Law, apply if a parent abducts or wrongfully
13 retains a child in a foreign country. Upon the agreement of the parties, Nevada is
14 hereby declared the state, and the United States of America is hereby declared the
15 country of habitual residence of the child for the purposes of applying the aforesaid
16 terms of the Hague Convention.

17 IT IS SO ORDERED.

18 Dated this 29th day of April, 2021

19 

20 Submitted by:

21 **McFARLING LAW GROUP**

22 /s/ Kimber Laux

23 Michael Burton, Esq.
24 Nevada Bar Number 14351
Kimber Laux, Esq.
Nevada Bar Number 15263
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335
Attorney for Plaintiff,
Ignacio Avila, Jr.

25 9FA DFA 73B4 7D76
26 Nadin Cutter
27 District Court Judge
28 Approved District Court Judge:
29 **BOWEN LAW OFFICES**

30 /s/ Theodore Medlyn

31 Theodore M. Medlyn, Esq.
32 Nevada Bar Number 15284
33 9960 W. Cheyenne Ave., Ste. 250
34 Las Vegas, NV 89129
(702) 240-5191
Attorney for Defendant,
Henry Oliva

From: [Theodore Medlyn](#)
To: [Kiya Jack](#)
Subject: Re: Avila v. Martinez and Oliva - FCCL and Order
Date: Thursday, April 29, 2021 8:54:05 AM

You may affix my e-signature.

Sent from my Sprint Samsung Galaxy S20+ 5G.
Get [Outlook for Android](#)

From: Kiya Jack <Kiyaj@mcfarlinglaw.com>
Sent: Thursday, April 29, 2021 8:52:15 AM
To: Theodore Medlyn <tmedlyn@lvlawfirm.com>
Cc: Raelene Jemison <RJemison@lvlawfirm.com>; Tricia Wilcox <TWilcox@lvlawfirm.com>; Kimber Laux <Kimberl@mcfarlinglaw.com>; MLG Client File Copy <clientcc@mcfarlinglaw.com>
Subject: Avila v. Martinez and Oliva - FCCL and Order

Good Morning,

Please find attached the revised FCCL and Order. Let us know if you approve. Thanks!

Sincerely,

Kiya Jack | Legal Assistant | Paralegal



6230 W Desert Inn Rd. Las Vegas, NV 89146
702-565-4335 phone | 702-732-9385 fax
Electronic service: eservice@mcfarlinglaw.com
Website: www.mcfarlinglaw.com
Direct email: kiyaj@mcfarlinglaw.com

CONFIDENTIALITY WARNING: This e-mail and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this missive. If you have received this in error, please notify the sender immediately by reply e-mail and delete this message and its attachments from your computer system. We do not waive any attorney-client, work product or other privilege by sending this email or attachment.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Ignacio Avila, Jr., Plaintiff.

CASE NO: D-15-515892-C

7 vs.

DEPT. NO. Department T

8 Rosie Martinez, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/29/2021

15 Gayle Nathan .

GayleNathanLaw@gmail.com

16 Jerome Bowen

twilcox@lvlawfirm.com

17 Rosie Martinez

rose_n_vegas@yahoo.com

18 Raelene Jemison

Rjemison@lvlawfirm.com

19 Arezou Piroozi

Apiroozi@piroozilawgroup.com

20 Mcfarling Law Group

eservice@mcfarlinglaw.com

21 Theodore Medlyn

tmedlyn@lvlawfirm.com

23

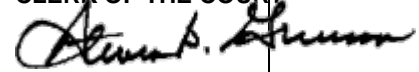
24

25

26

27

28



NEO
Michael Burton, Esq.
Nevada Bar Number 14351
Kimber Laux, Esq.
Nevada Bar Number 15263
MCFARLING LAW GROUP
6230 W. Desert Inn Road
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(702) 565-4335 phone
(702) 732-9385 fax
eservice@mcfarlinglaw.com
Attorney for Plaintiff,
Ignacio Avila, Jr.

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

IGNACIO AVILA, JR.,

Plaintiff,

vs.

ROSIE MARTINEZ and HENRY OLIVA,

Defendant.

Case Number: D-15-515892-C

Department: T

**NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER**

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///

1 PLEASE TAKE NOTICE that on April 29, 2021, a Findings of Fact, Conclusions of Law,
2 and Order was entered, a copy of which is attached hereto and by reference fully incorporated
3 herein.

4 DATED this 29th day of April, 2021.

5 **McFARLING LAW GROUP**

6 /s/ Kimber Laux

7 Kimber Laux, Esq.
8 Nevada Bar Number 15263
9 6230 W. Desert Inn Road
10 Las Vegas, NV 89146
11 (702) 565-4335
12 Attorney for Plaintiff,
13 Ignacio Avila, Jr.

14 **CERTIFICATE OF SERVICE**

15 The undersigned, an employee of McFarling Law Group, hereby certifies that on the 29th
16 day of April, 2021, she served a true and correct copy of Notice of Entry of Findings of Fact,
17 Conclusions of Law, and Order:

18 X via mandatory electronic service by using the Eighth Judicial District Court's E-
19 file and E-service System to the following:

20 Rosie Martinez – rose_n_vegas@yahoo.com
21 *Defendant, in proper person*

22 Jerome Bowen – twilcox@lvlawfirm.com
23 Raelene Jemison – rjemison@lvlawfirm.com
24 Theodore Medlyn – tmedlyn@lvlawfirm.com
Attorneys for Defendant, Henry Oliva

/s/Kiya J. Jack

Kiya J. Jack

ORDR

Michael Burton, Esq.
Nevada Bar Number 14351
Kimber Laux, Esq.
Nevada Bar Number 15263
MCFARLING LAW GROUP
6230 W. Desert Inn Road
Las Vegas, NV 89146
(702) 565-4335 phone
(702) 732-9385 fax
eservice@mcfarlinglaw.com
Attorney for Plaintiff,
Ignacio Avila, Jr.

**EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

IGNACIO AVILA, JR.,

Plaintiff,

vs.

ROSIE MARTINEZ and HENRY OLIVA,

Defendants.

Case Number: D-15-515892-C

Department: T

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

THIS MATTER came before the Honorable Nadin Cutter for an Evidentiary Hearing regarding the paternity of Alan Sergio Oliva ("Alan") on April 16, 2021 at 10 a.m. Present at the hearing were Plaintiff, Ignacio Avila, Jr. ("Ignacio"), represented by his attorney of record, Kimber Laux, Esq.; Defendant, Rosie Martinez ("Rosie"), in Proper Person; and Defendant, Henry Oliva ("Henry"), represented by his attorney of record, Theodore M. Medlyn, Esq.

The Court, having reviewed the papers and pleadings on file herein, and having taken evidence and testimony from trial, argument from counsel, and being duly and fully advised in the premises, issues the following findings, conclusions of law, and orders:

1 **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

2 **THE COURT FINDS** that the Court cannot go outside of the law to make its decision.

3 The Court must start with the law.

4 **THE COURT FURTHER FINDS** that the parties' situation is incredibly difficult and sad,
5 but none of the things that have happened are Ignacio's fault. Ignacio is innocent in this case as
6 much as Alan is innocent in this case.

7 **THE COURT FURTHER FINDS** that pursuant to NRS 126.051(2), a paternity test that
8 was ordered by the Nevada Supreme Court, taken by Ignacio, and confirmed in this case in 2020
9 is conclusive. Ignacio Avila Jr. is conclusively the biological father and legal father of Alan.

10 **THE COURT FURTHER FINDS** that Ignacio asked Rosie about Alan's paternity after
11 the child's birth and even while Rosie was pregnant with Alan and was lied to.

12 **THE COURT FURTHER FINDS** that Ignacio confronted Rosie about Alan's paternity
13 in 2016 and 2017 and was lied to again.

14 **THE COURT FURTHER FINDS** that at 11:50 a.m. during the parties' evidentiary
15 hearing, Rosie lied to the Court two times.

16 **THE COURT FURTHER FINDS** that the child's birth certificate needs to be amended
17 to reflect the name of Alan's father as Ignacio Avila Jr.

18 **THE COURT FURTHER FINDS** that the Court does not have enough evidence to find
19 that Henry's paternity test was fraudulent. The Court does not care to go down that path.

20 **THE COURT CONCLUDES** that, with respect to Henry's Voluntary Acknowledgment
21 of Paternity ("VAP") of Alan, NRS 126.053 governs voluntary acknowledgements of paternity or
22 parentage. Under NRS 126.053(3), after the expiration of the period during which an
23 acknowledgement may be rescinded, a VAP "may not be challenged except upon the grounds of
24 fraud, duress or material mistake of fact." The burden of proof is on the person challenging the

1 Acknowledgment to establish that the Acknowledgement was signed because of fraud, duress, or
2 material mistake of fact.

3 **THE COURT FURTHER FINDS** that, here, there was either a material mistake of fact
4 or fraud when Henry signed the VAP of Alan.

5 **THE COURT FURTHER CONCLUDES** that the conclusive presumption set forth in
6 NRS 126.051(2) overcomes any VAP signed by any person that was not the child's biological
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8 **THE COURT FURTHER FINDS** that when this matter was pending in 2018, before the
9 matter was appealed, Henry and Rosie intentionally deprived Ignacio of time with Alan. That
10 withholding was affirmed in testimony by all three parties – Henry, Rosie, and Ignacio. Ignacio
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12 ago.

13 **THE COURT FURTHER FINDS** that not only has Ignacio missed Alan's infancy,
14 toddlerhood, and young childhood, but after there was a decision in 2018, Ignacio's visitation was
15 further restricted. The best interest factor under NRS 125C.0035 which considers "which parent is
16 more likely to allow the child to have frequent associations and a continuing relationship with the
17 noncustodial parent" incredibly favors Ignacio.

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20 **THE COURT FURTHER FINDS** that there is no finding of contempt against Ignacio for
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23 **THE COURT FURTHER CONCLUDES** that under NRS 126.081(1), paternity actions
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THE COURT FURTHER FINDS that there is a conclusive presumption under NRS 126.051(2) that Ignacio is Alan's father.

ORDERS

IT IS HEREBY ORDERED that Ignacio is confirmed as Alan's father.

IT IS FURTHER ORDERED that Alan's name shall be changed and his birth certificate shall be amended to reflect Ignacio's last name. The child's name shall be changed to: Alan Sergio Avila. Ignacio shall bear the cost of amending Alan's birth certificate and, after the birth certificate is amended, he shall provide Rosie with an original birth certificate of her own, at his expense. The parties shall confer regarding changing Alan's middle name.

IT IS FURTHER ORDERED that Ignacio and Rosie shall have joint physical custody of Alan, with Ignacio's timeshare to begin immediately. Specifically, Ignacio shall have custody of Alan beginning Thursday at 2 p.m. and ending Sunday at 8 p.m. each week, such that Ignacio will have three overnights with Alan. Ignacio shall pick Alan up from Henry's home after the parties' evidentiary hearing ends. Ignacio and Rosie shall communicate as to any backpacks or other items that need to be exchanged between them.

IT IS FURTHER ORDERED that Ignacio is encouraged to seriously consider asking Henry to watch Alan on Fridays when Ignacio works such that Alan, Henry, and Henry Jr. can spend time together when Alan is at work.

IT IS FURTHER ORDERED that, temporarily, Ignacio and Rosie shall follow the Department T default holiday and visitation schedule. Ignacio and Rosie shall attend FMC to establish a permanent holiday and vacation timeshare.

IT IS FURTHER ORDERED that a Return Hearing from FMC Mediation and a Status Check regarding the minor child's middle name is set for May 26, 2021 at 10 a.m.

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If you want to adjust the amount of child support established in this order, you MUST file a motion to modify the order or submit a stipulation to the court. If a motion to modify the order is not filed or a stipulation not submitted, the child support obligation established in this order will continue until such time as all children who are subject of this order reach 18 years of age or, if the youngest child who is subject to this order is still in high school when he or she reaches 18 years of age, when the child graduates from high school or reaches 19 years of age, whichever comes first. Unless the parties agree otherwise in a stipulation, any modification made pursuant to a motion to modify the order will be effective as of the date the motion was filed.

The parties shall submit the information required in NRS 125B.055, NRS 125.130 and NRS 125.230 on a separate form to the Court and the Welfare Division of the Department of Human Resources within ten (10) days from the date the Decree in this matter is filed. Such information shall be maintained by the Clerk in a confidential manner and not part of the public record. The parties shall update the information filed with the Court and the Welfare Division of the Department of Human Resources within ten (10) days should any of that information become inaccurate.

1 The following statutory notices regarding custody of a minor children apply to the parties:

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6 that would substantially impair the ability of the other parent to maintain a
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10 relocate with the child; and

11 (b) If the noncustodial parent refuses to give that consent, petition the court
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15 parent's relocation with the child:

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17 the purpose of harassing the custodial parent.

18 3. A parent who relocates with a child pursuant to this section without the written
19 consent of the noncustodial parent or the permission of the court is subject to the
20 provisions of NRS 200.359.

21 B. Per NRS 125C.0065, the parties are hereby placed on notice of the following:

22 1. If joint physical custody has been established pursuant to an order, judgment or
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enters an order granting the parent primary physical custody of the child and
permission to relocate with the child is subject to the provisions of NRS 200.359.

C. Per NRS 125C.0045 (6), the parties are hereby placed on notice of the following:

PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR
DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY

1 D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person
2 having a limited right of custody to a child or any parent having no right of custody
3 to the child who willfully detains, conceals or removes the child from a parent,
4 guardian or other person having lawful custody or a right of visitation of the child
5 in violation of an order of this court, or removes the child from the jurisdiction of
6 the court without the consent of either the court or all persons who have the right
7 to custody or visitation is subject to being punished for a category D felony as
8 provided in NRS 193.130.

9 D. Per NRS 125C.0045 (7), the parties are hereby placed on notice of the following:

10 The parties, and each of them, are hereby placed on notice that the terms of the
11 Hague Convention of October 25, 1980, adopted by the 14th Session of the Hague
12 Conference on Private International Law, apply if a parent abducts or wrongfully
13 retains a child in a foreign country. Upon the agreement of the parties, Nevada is
14 hereby declared the state, and the United States of America is hereby declared the
15 country of habitual residence of the child for the purposes of applying the aforesaid
16 terms of the Hague Convention.

17 IT IS SO ORDERED.

18 Dated this 29th day of April, 2021

19 

20 Submitted by:

21 **MCFARLING LAW GROUP**

22 /s/ Kimber Laux

23 Michael Burton, Esq.
24 Nevada Bar Number 14351
Kimber Laux, Esq.
Nevada Bar Number 15263
6230 W. Desert Inn Road
Las Vegas, NV 89146
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25 9FA DFA 73B4 7D76
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29 **BOWEN LAW OFFICES**

30 /s/ Theodore Medlyn

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Subject: Avila v. Martinez and Oliva - FCCL and Order

Good Morning,

Please find attached the revised FCCL and Order. Let us know if you approve. Thanks!

Sincerely,

Kiya Jack | Legal Assistant | Paralegal



6230 W Desert Inn Rd. Las Vegas, NV 89146
702-565-4335 phone | 702-732-9385 fax
Electronic service: eservice@mcfarlinglaw.com
Website: www.mcfarlinglaw.com
Direct email: kiyaj@mcfarlinglaw.com

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1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Ignacio Avila, Jr., Plaintiff.

CASE NO: D-15-515892-C

7 vs.

DEPT. NO. Department T

8 Rosie Martinez, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 4/29/2021

15 Gayle Nathan .

GayleNathanLaw@gmail.com

16 Jerome Bowen

twilcox@lvlawfirm.com

17 Rosie Martinez

rose_n_vegas@yahoo.com

18 Raelene Jemison

Rjemison@lvlawfirm.com

19 Arezou Piroozi

Apiroozi@piroozilawgroup.com

20 Mcfarling Law Group

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21 Theodore Medlyn

tmedlyn@lvlawfirm.com

22
23
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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

November 05, 2015

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

November 05, 10:00 AM All Pending Motions
2015

HEARD BY: Elliott, Jennifer

COURTROOM: Courtroom 06

COURT CLERK: Victoria Pott

PARTIES:

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Nedda Ghandi, Attorney, present
present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
present

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR JOINT LEGAL CUSTODY, JOINT PHYSICAL CUSTODY, CHILD SUPPORT PURSUANT TO WRIGHT V. OSBURN, TO CHANGE MINOR CHILD'S NAME, AND FOR ATTORNEY'S FEES AND COSTS...DEFENDANT'S OPPOSITION AND COUNTERMOTION FOR AN ORDER FOR PATERNITY TESTING; FOR MEDIATION; FOR PRIMARY PHYSICAL CUSTODY AND DEFINED VISITATION AND FOR AN ORDER FOR CHILD SUPPORT, ATTORNEY'S FEES AND OTHER RELATED RELIEF...CASE MANAGEMENT CONFERENCE..GAYLE NATHAN ESQ'S MOTION TO WITHDRAW

Ms. Nathan represented she is staying on the case and withdrew her Motion to Withdraw as counsel for Defendant.

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Counsel requested a re-referral to mediation as the parties are agreeable to participating in mediation, and further requested a Trial date.

Parties stipulated to paternity. COURT FINDS, paternity is established. Plaintiff is the biological father of Jazlynn Rose Olivia, born 10/25/13.

Argument by counsel.

Court recommended the parties participate in a parenting program.

COURT ORDERED, Ms. Nathan's request to withdrawn her Motion to Withdraw is GRANTED.

Pursuant to STIPULATION, parties REFERRED to Family Mediation Center (FMC) for MEDIATION. A Return Hearing is SET. Order for Family Mediation Center Services FILED IN OPEN COURT. In the interim, parties shall have TEMPORARY JOINT LEGAL CUSTODY, with Defendant having TEMPORARY PRIMARY PHYSICAL CUSTODY of the minor child. Effective 11/13/15, Plaintiff shall have VISITATION every other weekend from Friday at 12:00 PM to Sunday at 4:00 PM, and Tuesdays and Thursdays from 12:00 PM to 6:00 PM in the weeks following his weekend visitation. For this year only, Plaintiff shall have Thanksgiving Day from 9:00 AM to 1:00 PM and Christmas Day from 9:00 AM to 7:00 PM (if it is not Plaintiff's regularly scheduled visitation weekend). Absent mutual agreement thereafter, parties shall follow the Court's DEFAULT HOLIDAY SCHEDULE, a copy of which was provided to the parties IN OPEN COURT.

An Evidentiary Hearing is SET for 3/8/16 at 1:30 PM (Stack #1) on the issue of CUSTODY, with a Calendar Call SET for 2/23/16 at 11:00 AM. The Department's JEA shall send a Trial Management Order to counsel with the scheduling deadlines.

Parties shall co-parent via e-mail ONLY IF an issue arises that is causing conflict between the parties. The parties shall notify each other (10) days prior to any CHANGE in ADDRESS, TELEPHONE NUMBER, and/or EMPLOYMENT. In addition, the change shall be filed with the Clerk s Office.

The Court is not going to order that the MINOR CHILD'S SURNAME be changed. A change will be granted only upon mutual agreement of the parties. Absent an agreement, the most the Court would consider is a hyphenated surname. Counsel shall confer and attempt resolution of this issue.

Based on Plaintiff's reported gross income of \$4,639.09 per month. Plaintiff shall pay Defendant CHILD SUPPORT at the statutory maximum of \$748.00 per month, retroactive to 7/1/15. Plaintiff shall file a Financial Disclosure Form with a copy of his year-to-date wage statement attached.

Defendant shall continue to provide HEALTH INSURANCE for the benefit of the minor child. Plaintiff shall reimburse Defendant monthly for his one-half share of the premium cost. Counsel shall confer and determine the cost. Any unreimbursed medical, dental, optical, orthodontic or other

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health related expense incurred for the benefit of the minor child is to be divided equally between the parties. Either party incurring an out of pocket medical expense for the child shall provide a copy of the paid invoice/receipt to the other party within thirty days of incurring such expense, if not tendered within the thirty day period, the Court may consider it as a waiver of reimbursement. The other party will then have thirty days from receipt within which to dispute the expense in writing or reimburse the incurring party for one-half of the out of pocket expense, if not disputed or paid within the thirty day period, the party may be subject to a finding of contempt and appropriate sanctions.

Pursuant to STIPULATION, Plaintiff shall reimburse Defendant one-half of the child's birthing costs upon receiving verification of the cost.

Ms. Nathan shall prepare the Order from today's hearing; Ms. Ghandi shall review and sign off.

1/19/16 9:30 AM Return Hearing: FMC (Mediation)

3/8/16 1:30 PM Evidentiary Hearing (Custody)

2/23/16 11:00 AM Calendar Call

INTERIM CONDITIONS:

FUTURE HEARINGS: Jan 19, 2016 9:30AM Return Hearing
FMC (Mediation)
Courtroom 06 Elliott, Jennifer

Feb 23, 2016 11:00AM Calendar Call
Courtroom 06 Elliott, Jennifer

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

January 19, 2016

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
 vs.
 Rosie Martinez, Defendant.

January 19, 2016 9:30 AM Return Hearing

HEARD BY: Elliott, Jennifer

COURTROOM: Courtroom 06

COURT CLERK: Jefferyann Rouse

PARTIES:

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Nedda Ghandi, Attorney, present
present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
not present

JOURNAL ENTRIES

- RETURN HEARING: FMC (MEDIATION)

Upon the matter being called the court noted the agreement reached by parties.

Opening remarks by Attorney Nathan who advised the court Defendant/Mom was at home with the children whom are sick.

The Court noted the correction as to the minutes from the hearing held on 11-5-2015.

THE COURT further noted concerns as to a settlement being reached and parties attending UNLV Mediation.

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THE COURT ORDERED,

1. Defendant/Mom shall file a FINANCIAL DISCLOSURE FORM (FDF).
2. Discovery shall be open.
3. Counsel shall confer as to outstanding issues prior to the use of another process.
4. Counsel shall contact Chambers if a need for an Alternative Dispute Resolution process is needed.
5. Calendar Call SET for 2-23-2016 at 11:00 am.
6. Evidentiary Hearing SET for 3-8-2016 at 1:30 pm. (stack 1)

INTERIM CONDITIONS:

FUTURE HEARINGS: Jan 19, 2016 9:30AM Return Hearing
FMC (Mediation)
Courtroom 06 Elliott, Jennifer

Feb 23, 2016 11:00AM Calendar Call
Courtroom 06 Elliott, Jennifer

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February 23, 2016

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Parties AGREED to keep the SCHEDULE with TEMPORARY ORDERS currently in place becoming PERMANENT ORDERS.

Parties shall have JOINT LEGAL CUSTODY of the minor child.

Defendant shall have PRIMARY PHYSICAL CUSTODY of the minor child.

Plaintiff shall pay Defendant CHILD SUPPORT in the amount of \$400.00 per month, plus an ADDITIONAL \$50.00 per month towards CHILD SUPPORT ARREARS for a total monthly SUPPORT OBLIGATION of \$450.00 per month, until CHILD SUPPORT ARREARS are PAID IN FULL.

Attorney Ghandi shall work with parties as to the ESTABLISHMENT of CHILD SUPPORT ARREARS, so that there is a date as to when Plaintiff's CHILD SUPPORT ARREARS are PAID IN FULL.

The minor child's name shall be changed to JAZLYNN ROSE MARTINEZ AVILA.

The minor child's BIRTH CERTIFICATE shall be AMENDED to reflect the child's name change.

Defendant shall have (30) days to provide all UNCOVERED MEDICAL COSTS to Opposing Counsel.

UNCOVERED MEDICAL BILLS submitted to Opposing Counsel shall be from the date of the child's birth (10-2013) through today date (2-23-2016), and include BIRTHING COSTS.

Both parties shall provide MEDICAL INSURANCE COVERAGE for the minor child.

Neither party shall receive an OFF-SET as to MEDICAL INSURANCE COVERAGE.

Parties shall utilize Department L's Default Holiday Plan.

Attorney Ghandi shall attach the Default Holiday Plan to the final Decree of Custody Order.

Attorney Gayle Nathan's MOTION to WITHDRAW as ATTORNEY of RECORD shall be GRANTED.

Hearing SET for 3-8-2016 shall be VACATED.

Non-Jury Trial SET for 3-8-2016 shall be VACATED.

Attorney Ghandi shall prepare the order of the court. Defendant shall have (7) days to review and sign off.

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INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

January 25, 2018

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

January 25, 2018 9:00 AM All Pending Motions

HEARD BY: Elliott, Jennifer**COURTROOM:** Courtroom 06**COURT CLERK:** Victoria Pott**PARTIES:**

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Arezou Piroozi, Attorney, present
present

Ignacio Avila, Plaintiff, not present Arezou Piroozi, Attorney, present

Ignacio Avila, Plaintiff, not present Arezou Piroozi, Attorney, present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
present

JOURNAL ENTRIES

- PLAINTIFF'S VERIFIED MOTION TO AMEND THE COMPLAINT FOR CUSTODY, TO ESTABLISH JOINT LEGAL AND JOINT PHYSICAL CUSTODY, TO SET ASIDE THE CUSTODY DECREE, TO MODIFY CUSTODY, FOR CHILD SUPPORT, AND FOR ATTORNEY'S FEES AND COSTS...PLAINTIFF'S MOTION TO JOIN HENRY OLIVA AS A DEFENDANT, FOR THE LIMITED PURPOSE OF DETERMINING PATERNITY OF THE MINOR CHILD, ALAN OLIVA

Soraya Veiga, Bar #7944, present on behalf of Defendant in an UNBUNDLED capacity. Steven Yarmy, Bar #8733, present on behalf of Henry Oliva in an UNBUNDLED capacity.

Plaintiff, Defendant, and Henry Oliva sworn and testified.

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Argument by Ms. Piroozi, Ms. Veiga, and Mr. Yarmy regarding Plaintiff's Motions and allegations of fraud. Plaintiff alleged Mr. Oliva presented with a false DNA test.

Court read relative case law on the record.

COURT ORDERED, the Default filed on 1/24/18 shall be STRICKEN from the record. Henry Oliva shall be added as a third party Defendant to this case. Court is not ordering a Paternity Test absent a STIPULATION. Parties REFERRED to Family Mediation Center (FMC) for MEDIATION. A Return Hearing is SET for 3/29/18 at 9:30 AM. Order for Family Mediation Center Services FILED IN OPEN COURT. If parties are unable to reach an agreement, counsel shall file a brief as to whether fraud can be imputed to the Defendant when the fraud was committed by a person outside of the case. Counsel may further request an earlier return date.

The parties shall keep each other apprised of any CHANGE in ADDRESS, TELEPHONE NUMBER, and EMPLOYMENT, ten days prior to making the change. In addition, the change in address and telephone number shall be filed with the Clerk s Office.

Pursuant to EDCR 5.301, none of the parties shall discuss any part of this litigation with the children or in the presence of the children.

Ms. Piroozi shall prepare the Order from today's hearing; Ms. Veiga and Mr. Yarmy shall have 7 judicial days to review and sign off.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

March 29, 2018

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

March 29, 2018 7:30 AM Minute Order

HEARD BY: Elliott, Jennifer**COURTROOM:** Courtroom 06**COURT CLERK:** Victoria Pott**PARTIES:**

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Michael Burton, Attorney, not present
not present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
not present

JOURNAL ENTRIES

- The Court in review of its March 29, 2018 calendar notes the following:

1. This case was initiated by Plaintiff's complaint for custody of Jazlynn Rose Martinez (DOB 10/25/13).
2. Plaintiff admitted that through his own "self-help" DNA test, he found out on January 20, 2017, that Defendant's child Alan (DOB 10/18/11) was also his biological son.
3. Thereafter, the First Amended Decree of Custody, drafted by Plaintiff's counsel, was filed March 1, 2017 wherein only the minor child Jazlyn was included as a child born to Plaintiff and Defendant.
4. Plaintiff filed an Amended Complaint for Custody November 1, 2017 which included the minor child Alan (DOB 10/18/11).
5. At the January 25, 2018 hearing, Plaintiff was represented by Arezou Piroozi, Esq., Defendant was represented by Soraya Veiga, Esq. (unbundled) and Henry Oliva was represented by Steven Yarmy,

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Esq. (unbundled).

6. The Court Ordered that Henry Oliva be added as a third party Defendant in this case.

7. After listening to argument at the January 25, 2018 hearing, the Court summarized the relevant paternity law into the record as reiterated below.

8. The Court Found and Ordered that the child was over six (6) years of age, that Henry Oliva was the named father on the birth certificate, that the child had been living with Defendant Rosie Martinez and Henry Oliva since his birth, that Plaintiff's "self-help" positive DNA test was provided to Plaintiff PRIOR to his attorney having drafted the First Amended Decree of Custody filed March 1, 2017 wherein only the minor child Jazlynn was included as a child born to Plaintiff and Defendant and that absent clear and convincing evidence of fraud on Defendant's part, or absent a stipulation between the parties, his request for Court-Ordered paternity tests of himself and Henry Oliva were denied.

9. Plaintiff advised that he had taken Alan on visitation many times when he had Jazlynn for visitation. The Court advised that he may have established a meaningful relationship with the child under NRS 125C.050 and the parties could mediate a stipulated schedule if they desired.

10. Plaintiff thereafter advised the Court that Mr. Oliva had recently text of a portion of a positive DNA test without any named father designed to make Plaintiff believe that he was the father of the minor child Alan. The Court made no findings as to this text.

11. The Court sent all three (3) parties to mediation and Ordered that if there was an impasse, Plaintiff's counsel shall file a legal brief if Plaintiff felt he had clear and convincing evidence of fraud that could be imputed to Defendant pursuant to paternity law.

12. The parties were Ordered not to discuss any part of this litigation with or in the presence of the children pursuant to EDCR 5.301.

13. The Court is in receipt of a March 1, 2018 letter from the Family Mediation Center (FMC) stating that the parties reached an impasse.

14. No further briefing has been filed in this case.

15. Plaintiff has not filed a motion for a meaningful relationship with the minor child Alan, which the Court advised he may be able to establish, if it is true that he had visitation with Alan many times when he had his visitation with Jazlyn.

16. Ms. Piroozi failed to file the Order from the January 25, 2018 hearing and thus the Court files this Order.

The Court FINDS that pursuant to NRS 440.610, the facts listed in the child's birth certificate become prima facie evidence of the facts stated therein. Thus, a person listed as the father on the birth certificate is presumed to be the father of the child if paternity becomes disputed.

NRS 440.610 Certificate as prima facie evidence.

Each certificate, as provided for in this chapter, filed within 6 months after the time prescribed for their filing, shall be prima facie evidence of the facts therein stated. Data pertaining to the father of a child is such evidence if the alleged father is, or becomes, the husband of the mother in a legal marriage; if not, the data pertaining to the father of a child is not such evidence in any civil or criminal proceeding adverse to the interests of the alleged father, or of his heirs, devisees or other

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successors in interest, if the paternity is controverted.

The following statutory presumption applies to Paternity findings:

N.R.S. 126.051 Presumptions of Paternity

1. A man is presumed to be the natural father of a child if:

(d) While the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child.

"Under the statutory scheme for determining paternity, the district court is not compelled to determine, on the basis of deoxyribonucleic acid (DNA) test, that a man is or is not a child's father as a matter of law, N.R.S. 126.051, 126.121. *Love v. Love*, 1998, 959 P.2d 523, 114 Nev. 572. The statutory scheme for determining paternity clearly reflects the legislature's intent to allow non-biological factors to become critical. *Love v. Love*, 1998, 959 P.2d 523, 114 Nev. 572.

"The Legislature has made it clear that although it is now possible to determine biological paternity with certainty, biology is not the predominant consideration in determining parental responsibility once a child has reached his or her third year of life, (*In re Marriage of B.*, supra, 124 Cal.App.3d at p. 531, 177 Cal.Rptr. 429.) *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1449, 53 Cal. Rptr. 2d 439, 447 (1996).

"The state has an interest in preserving and protecting the developed parent-child and sibling relationships which give young children social and emotional strength and stability. [Citation omitted.] This interest is served notwithstanding termination of the mother's marital relationship with the presumed father. (*Susan H. v. Jack S.*, supra, 30 Cal.App.4th at pp. 1442 1443, 37 Cal.Rptr.2d 120.), *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1450, 53 Cal. Rptr. 2d 439, 448 (1996).

Biology will only control a determination of paternal responsibility for a limited period early in a child's life and thereafter the predominant consideration must be the nature of the presumed father's social relationship with the child. *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1446, 53 Cal. Rptr. 2d 439, 446 (1996).

Under California Statutory Law, In 1980 the Legislature added what is now section 7541 providing for rebuttal of the presumption by blood testing requested within two years following a child's birth, *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1444, 53 Cal. Rptr. 2d 439, 444-45 (1996). After two (2) years absent clear and convincing evidence of fraud or mistake of fact, a request for a paternity test may be denied.

"In the case of an older child the familial relationship between the child and the man purporting to be the child's father is considerably more palpable than the biological relationship of actual paternity. A man who has lived with a child, treating it as his son or daughter, has developed a relationship with

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the child that should not be lightly dissolved and upon which liability for continued responsibility to the child might be predicated. This social relationship is much more important, to the child at least, than a biological relationship of actual paternity, *In re Marriage of Freeman*, 45 Cal. App. 4th 1437, 1445, 53 Cal. Rptr. 2d 439, 445 (1996).

Plaintiff is also barred by claim preclusion, which is a defense that prevents the re-litigation of a previously resolved claim. *Elizondo v. Hood Mach., Inc.*, 129 Nev., Adv. Op. 84, 312 P.3d 479, 483 (2013). Precluding the re-litigation of issues such as paternity and other valid judgments, "protect[s] the finality of decisions and prevent[s] the proliferation of litigation" that could have been brought in the prior action. *Holt v. Reg'l Tr. Servs. Corp.*, 127 Nev., Adv. Op. 80, 266 P.3d 602, 605 (2011) (internal quotations omitted). This doctrine can apply to divorce decrees incorporating marital settlement agreements that resolve issues of paternity and child support obligations. *Love v. Love*, 114 Nev. 572, 575, 959 P.2d 523, 526 (1998); *Willerton v. Bassham*, 111 Nev. 10, 14, 889 P.2d 823, 825 (1995).

Claim preclusion applies when "(1) the final judgment is valid, ... (2) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case, and (3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, or the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a good reason for not having done so." *Weddell v. Sharp*, 131 Nev., Adv. Op. 28, 350 P.3d 80, 85 (2015). The Court finds in the case at bar that Plaintiff is precluded from raising this claim based on judgments filed December 14, 2015, June 28, 2016, July 22, 2016, February 8, 2017 and March 1, 2017.

Although there is a valid policy concern about the unfairness of being obligated to support someone else's child, however, there is a balance between that policy interest and claim preclusion's policy of protecting the finality of judgments as it carves out an exception to claim preclusion for previous judgments that were obtained by extrinsic fraud. (See *Love*, 114 Nev. at 576, 959 P.2d at 526.) (Emphasis added.)

Where there is an older child (age 3 or older), absent clear and convincing evidence of fraud, the policy of the law in determining paternity falls on the side of societal interests in protecting children by providing consistency, security, support and maintaining the known family structure. This may include the attachment and bond they have developed as family members which is deemed more compelling than biology when a man has been standing in the role as the child's father, holding the child out as his own, and they have developed an identity as parent and child--as a family. The child in this case is six and a half (6.5) years old; the time to contest paternity has long past.

The Court FINDS that paternity cannot be challenged as the child is now six and one half (6.5) years old and Plaintiff has failed to challenge the child's paternity in a timely manner in the instant case.

The Court ORDERS that other than joining Henry Oliva as a necessary party, Plaintiff's MOTION

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SHALL BE DENIED and the case shall be closed.

The Court FURTHER ORDERS that parties SHALL NOT DISCUSS this case with the minor children. Children can suffer hurt and loss when a parent determines later in their minority to contest paternity.

The parties are hereby put on notice that they are not to discuss this or any other Family Court litigation with the minor child pursuant to EDCR 5.301 below:

EDCR 5.301

Confidentiality, best interests of children. Absent a written order of the court to the contrary, all lawyers, litigants, witnesses or other parties privy to matters being heard by the family division are prohibited from:

- (a) Discussing the issues, proceedings, pleadings, or papers on file with the court with the minor children of the litigants;
- (b) Allowing any minor child to review the record of the proceedings before the court, whether in the form of transcripts, audio cassettes or audio-visual tapes; or
- (c) Leaving such materials in a place where it is likely or foreseeable that a child will access those materials.

The Clerk shall remove the matter from the Court's calendar set March 29, 2018 at 9:30 a.m. pursuant to EDCR 2.23. Department L JEA shall advise parties and counsel there shall be no appearances and this case has been closed. Should a final Order be desired, Ms. Piroozi may draft an Order from this minute order and both Ms. Martinez and Mr. Oliva shall review and sign off or waive signature.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

September 11, 2018

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

September 11, 10:00 AM All Pending Motions
2018

HEARD BY: Hardcastle, Gerald W.**COURTROOM:** Courtroom 06**COURT CLERK:** Victoria Pott**PARTIES:**

Henry Oliva, Third Party Defendant, present	
Ignacio Avila, Plaintiff, Counter Defendant, not present	Michael Burton, Attorney, not present
Ignacio Avila, Plaintiff, not present	Arezou Piroozi, Attorney, present
Ignacio Avila, Plaintiff, present	Arezou Piroozi, Attorney, present
Jazlynn Martinez-Olivia, Subject Minor, not present	
Rosie Martinez, Defendant, Counter Claimant, not present	Pro Se

JOURNAL ENTRIES

- PLAINTIFF'S MOTION TO RECONSIDER THE ORDER ENTERED June 20, 2018...COUNTER-DEFENDANT HENRY OLIVA'S OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER THE ORDER ENTERED June 20, 2018; AND OPPOSITION TO PLAINTIFF'S TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS AND COUNTER-DEFENDANT'S MOTION FOR ATTORNEY'S FEES AND COSTS

Steven Yarmy, Bar #8733, present on behalf of Henry Oliva, putative father.

Court noted it reviewed the motion and the underlying decision, and the COURT FINDS that Judge Elliott carefully considered the facts and applied the law in issuing her decision, and this Court is not

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going to interfere with that decision.

Based on the foregoing, COURT ORDERED, Plaintiff's Motion to Reconsider the Order entered June 20, 2018 is DENIED. ATTORNEY'S FEES are awarded in favor of Defendant against Plaintiff in the amount of \$1,000.00. This amount is REDUCED TO JUDGMENT, collectible by all lawful means.

Mr. Yarmy shall prepare the Order from today's hearing; Ms. Piroozi shall review and sign off.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

March 20, 2020

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

March 20, 2020 7:30 AM Minute Order

HEARD BY: Gibson, David, Jr.**COURTROOM:** Chambers**COURT CLERK:** April Graham**PARTIES:**

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Michael Burton, Attorney, not present
not present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
not present

JOURNAL ENTRIES

- MINUTE ORDER- NO HEARING HELD AND NO APPEARANCES

Pursuant to Supreme Court of Nevada case #77242 having remanded matters back to District Court, the COURT ORDERS:

A referral for Paternity testing shall be issued to determine if Plaintiff, Ignacio Avila, Jr., is the natural father of the minor child, Jazlynn Rose Martinez-Avila (FKA Jazlynn Rose Martinez-Olivia). Defendant, Rosie Martinez, shall present the minor child, Jazlynn Rose Martinez-Avila (FKA Jazlynn Rose Martinez-Olivia), for testing in accordance with the referral. Parties are Ordered to schedule specimen collection within the next seven (7) days. This matter shall be set for a RETURN HEARING on the Paternity Test Results on June 23, 2020 at 10:00 AM. As a matter of Judicial economy, Defendant's Motion and Plaintiff's Opposition and Countermotion currently set for April 1, 2020 at 9:00 AM shall be RESET to June 23, 2020 at 10:00 AM.

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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

CLERK'S NOTE: Court Clerk emailed a copy of this Minute Order along with the referral for Paternity Testing on 3/20/20 to counsel and Defendant at their email addresses on file as follows: apiroozi@piroozilawgroup.com and rose_n_vegas@yahoo.com. (ag)

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

April 02, 2020

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

April 02, 2020 11:15 AM Minute Order

HEARD BY: Gibson, David, Jr.**COURTROOM:** Chambers**COURT CLERK:** April Graham**PARTIES:**

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Michael Burton, Attorney, not present
not present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
not present

JOURNAL ENTRIES

- MINUTE ORDER: NO HEARING HELD AND NO APPEARANCES

Correction to Minute Order from 3/20/20:

Pursuant to Supreme Court of Nevada case #77242 having remanded matters back to District Court, the COURT ORDERS: A referral for Paternity testing shall be re-issued to determine if Plaintiff, Ignacio Avila, Jr., is the natural father of the minor child, Alan Oliva, born 10/18/2011. Defendant, Rosie Martinez, shall present the minor child, Alan Oliva, for testing in accordance with the referral. Parties are Ordered to schedule specimen collection within the next seven (7) days. The RETURN HEARING on the Paternity Test Results on June 23, 2020 at 10:00 AM shall STAND.

COURT FURTHER ORDERS: Defendant's Motion and Plaintiff's Opposition and Countermotion currently set for June 23, 2020 at 10:00 AM shall STAND.

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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

CLERK'S NOTE: Court Clerk emailed a copy of this Minute Order along with the referral for Paternity Testing on 4/2/20 to counsel and Defendant at their email addresses on file as follows: apiroozi@piroozilawgroup.com and rose_n_vegas@yahoo.com. (ag)

INTERIM CONDITIONS:

FUTURE HEARINGS:

Jun 23, 2020 10:00AM Return Hearing
re: Paternity Test
Courtroom 23 Hardcastle, Gerald W.

Jun 23, 2020 10:00AM Motion
Defendant's Motion and Notice of Motion to Modify Child Support and/or Spousal Support
Courtroom 23 Hardcastle, Gerald W.

Jun 23, 2020 10:00AM Opposition & Countermotion
Plaintiff's Opposition to Motion and Notice of Motion to Modify Child Support and/or Spousal Support And Counter-Motion for Modification of Custody; To Award Plaintiff Primary Physical Custody of the Minor Child Based Upon Changed Circumstances; For Joint Legal Custody to Remain Status Quo; To Set Child Support; To Award Plaintiff the Tax Exemption; For Specific Visitation to Defendant; For Mandatory Mediation; For Attorney's Fees and Costs; And For Other Related Relief
Courtroom 23 Hardcastle, Gerald W.

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

June 23, 2020

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

June 23, 2020 10:00 AM All Pending Motions

HEARD BY: Hardcastle, Gerald W.**COURTROOM:** Courtroom 23**COURT CLERK:** Jefferyann Rouse**PARTIES:**

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Michael Burton, Attorney, not present
not present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
not present

JOURNAL ENTRIES

- RETURN HEARING: RE: PATERNITY TEST...MOTION: DEFENDANT'S MOTION AND NOTICE OF MOTION TO MODIFY CHILD SUPPORT AND/ OR SPOUSAL SUPPORT...OPPOSITION & COUNTERMOTION: PLAINTIFF'S OPPOSITION TO MOTION AND NOTICE OF MOTION TO MODIFY CHILD SUPPORT AND/OR SPOUSAL SUPPORT AND COUNTER-MOTION FOR MODIFICATION OF CUSTODY; TO AWARD PLAINTIFF PRIMARY PHYSICAL CUSTODY OF THE MINOR CHILD BASED UPON CHANGED CIRCUMSTANCES; FOR JOINT LEGAL CUSTODY TO REMAIN STATUS QUO; TO SET CHILD SUPPORT; TO AWARD PLAINTIFF THE TAX EXEMPTION; FOR SPECIFIC VISITATION TO DEFENDANT; FOR MANDATORY MEDIATION; FOR ATTORNEY'S FEES AND COSTS; AND FOR OTHER RELATED RELIEF

Due to Governor Sisolak's Stay Home for Nevada directive, Plaintiff/Dad (natural father) his Attorney of Record Arezou H. Piroozi, Defendant/Mom appeared in a pro se manner along with

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Henry Oliva (a 3rd party) whom was (mom's live-in boyfriend) was also present along with Attorney Michelle Mercer. All parties and counsel appeared via bluejeans equipment.

Upon the matter being called, the Court noted the Supreme Courts Ruling and the Order as to issues of paternity from the hearing held on 9-21-2018.

The Court further noted Plaintiff/ Ignacio Avila is the biological father of the minor child.

Attorney Mercer advised the Court as to her concerns regarding Henry Oliva not being noticed as to the hearing. Counsel further advised the Court there has never been any pleadings filed against Mr. Henry Oliva.

Attorney Piroozi stated concerns as to Mr. Henry Oliva filing a motion and being a third (3rd) party in this proceedings, Counsel further expressed concerns as to Mr. Henry Oliva submitting a fraudulent DNA TEST indicating he was the father of the minor child.

The Court noted concerns as to both children being appointed an Guardian Ad Litem.

Further discussion as to Defendant's Motion and Plaintiff/Dad's Opposition and Countermotion.

THE COURT FINDS Mr. Henry Oliva was not given notice and opportunity to be heard on the paternity as to Jazlynn.

THE COURT ORDERED,

The COURTS ORDER from the HEARING HELD on 9-21-2018 shall be SET-ASIDE.

On the ISSUE of PATERNITY the HEARING shall be for BOTH CHILDREN.

Contact shall be made with the CHILDREN'S ATTORNEY'S PROJECT as soon as possible.

Plaintiff/Ignacio Avila Jr. shall pay the GUARDIAN AD LITEM fees.

Issues as to the FEES for the GUARDIAN AD LITEM shall be DISCUSSED at TIME of TRIALS.

NON-JURY TRIAL SET for 8-31-2020 at 9:00 am. re: paternity.

Attorney Mercer shall prepare the order of the court.

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INTERIM CONDITIONS:

FUTURE HEARINGS:

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July 31, 2020

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

October 26, 2020

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

October 26, 2020 9:00 AM Minute Order

HEARD BY: Brown, Lisa

COURTROOM: Chambers

COURT CLERK: Diana Gonzales

PARTIES:

Henry Oliva, Third Party Defendant, not present

Ignacio Avila, Plaintiff, Counter Defendant, not present Michael Burton, Attorney, not present

Jazlynn Martinez-Olivia, Subject Minor, not present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
not present

JOURNAL ENTRIES

- MINUTE ORDER-NO HEARING HELD

This matter is set for trial on 2-8-21 at 9 a.m.

This matter was set on this Court's Chambers Calendar on 10-7-20. After a review of the matter, this minute order issues.

Henry Oliva filed a Motion on 8-26-20 to request that the minor children's original birth certificates be produced by the Department of Vital Statistics in discovery. Discovery is wide ranging and includes information that is reasonably calculated to lead to admissible evidence. This is a paternity dispute and the request for a copy of the original birth certificates is reasonable and relevant.

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It is ORDERED that the Dept. of Vital Statistics SHALL produce a copy of the minor children's original birth certificates to this Court. Upon receipt of same, this Court SHALL notify all parties and allow inspection of said documents. Upon receipt, these documents SHALL be made a confidential Court Exhibit. This is not a determination of their admissibility at trial.

The Countermotion filed by Ignacio Avila, Jr. requests that the Motion filed by Henry Oliva be stricken and that he be awarded attorney's fees. This Court DENIES the Countermotion.

All parties shall bear their own fees and costs.

Ms. Mercer SHALL prepare the Order.

CLERK'S NOTE: a copy of the minute order has been provided to counsel/parites. dg

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

October 27, 2020

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

October 27, 2020 8:00 AM Minute Order

HEARD BY: Brown, Lisa**COURTROOM:** Chambers**COURT CLERK:** Diana Gonzales**PARTIES:**

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Michael Burton, Attorney, not present
not present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
not present

JOURNAL ENTRIES

- MINUTE ORDER-NO HEARING HELD

NRCP 1 and EDCR 1.10 mandate procedures in district court shall be administered to secure speedy, efficient and inexpensive determinations in every action. EDCR 2.23(c) further grants this Court discretion to decide matters on the pleadings before it without recourse to oral argument.

Defendant, Henry Oliva's, First Amended Motion to Amend an Order et al. was filed on 9-15-20. The Certificate of Service shows service on Ms. Piroozi, Esq. and Rosie Martinez on 9-15-20. To date, no opposition has been filed.

EDCR 5.503 states in part: Failure of an opposing party to serve and file a written opposition may be construed as an admission that the motion is meritorious and a consent that it be granted.

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For good cause shown, the Motion is GRANTED. The hearing set on 10-29-20 at 10 a.m. is VACATED.

CLERK'S NOTE: a copy of this minute order has been provided to parties. dg

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

November 25, 2020

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

November 25, 7:00 AM Minute Order
2020

HEARD BY: Brown, Lisa**COURTROOM:** Chambers**COURT CLERK:** Diana Gonzales**PARTIES:**

Henry Oliva, Third Party Defendant, not
present

Ignacio Avila, Plaintiff, Counter Defendant, Michael Burton, Attorney, not present
not present

Jazlynn Martinez-Olivia, Subject Minor, not
present

Rosie Martinez, Defendant, Counter Claimant, Pro Se
not present

JOURNAL ENTRIES

- MINUTE ORDER-NO HEARING HELD

This matter is scheduled for hearing on December 1, 2020 on Plaintiff 's Motion for Reconsideration of the Order filed on August 17, 2020.

This Court exercises authority granted it pursuant to EDCR 1.90(b)(1) to manage its docket in an efficient and effective manner and pursuant to EDCR 2.23(c) to decide matters without recourse to oral argument. Having reviewed the papers and pleadings before it and, good cause appearing, this Court issues its findings and orders. EDCR 5.513(a) requires a motion for reconsideration be filed within 14 calendar days after service of notice of entry of order .

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On August 17, 2020, an Order from June 23, 2020 hearing was filed. On October 9, 2020, or fifty-three (53) days later, Plaintiff filed his Motion for Reconsideration of the written order. Accordingly, the Court FINDS Plaintiff s Motion for Reconsideration is untimely filed and, therefore, DENIED. Accordingly, the Court ORDERS the December 1, 2020 hearing VACATED.

CLERK'S NOTE: a copy of this minute order has been provided to parties. dg

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

April 16, 2021

D-15-515892-C Ignacio Avila, Jr., Plaintiff.
vs.
Rosie Martinez, Defendant.

April 16, 2021 10:00 AM Evidentiary Hearing

HEARD BY: Cutter, Nadin**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Nicole Hutcherson**PARTIES:**

Henry Oliva, Third Party Defendant, present
 Ignacio Avila, Plaintiff, Counter Defendant, Michael Burton, Attorney, not present
 present
 Jazlynn Martinez-Olivia, Subject Minor, not
 present
 Rosie Martinez, Defendant, Counter Claimant, Pro Se
 present

JOURNAL ENTRIES

- In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the BlueJeans application.

Attorney Kimber Laux, Attorney Astasia Lucas and Attorney Theodore Medlyn were also present via VIDEO CONFERENCE through the BlueJeans application.

Attorney Laux stated the matter was remanded back to District Court by the Supreme Court for further paternity findings. COURT NOTED the results of the paternity test show Ignacio Avila, Jr. is the Father to both of the minor children named in this action. Attorney Medlyn stated he sent a spreadsheet opposing Counsel with a proposed visitation schedule, but the Parties have not been able to reach an agreement. Attorney Laux stated she was under the impression today's hearing was regarding paternity only. Discussion regarding the matters of paternity and custody to be heard today.

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Opening statements made by Counsel. Sworn testimony and Exhibits stipulated to and/or admitted (see worksheet). Closing arguments by all Parties.

At 11:50 a.m., COURT ADMONISHED Mother about lying to the Court when questioned about who she was speaking to. COURT NOTED Mother initially told the Court she was speaking to her cat and then she was speaking to "no one" when he was actually speaking to her boyfriend, Oscar.

COURT NOTED Henry Oliva is now considered a third party in this action. Should Mr. Oliva choose to pursue visitation with minor child Alan, it would be similar to Grandparent visitation.

COURT ENCOURAGED Ignacio Avila, Jr. to allow minor child, Alan, to spend time with Mr. Oliva and his half brother each Friday while he is at work.

COURT STATED its finding and ORDERED the following:

1. COURT FINDS Ignacio Avila, Jr. is the biological and legal Father of Alan.
2. Alan's BIRTH CERTIFICATE shall be AMENDED to list Ignacio Avila, Jr. as Father. Ignacio Avila, Jr. shall obtain two (2) original certified copies of the amended birth certificate and pay for all costs. Ignacio Avila, Jr. shall provide one (1) of the copies to Mother.
3. The REQUEST for FRAUD against Henry Oliva shall be DENIED.
4. Mother and Ignacio Avila, Jr. shall have JOINT PHYSICAL CUSTODY of the minor children. Ignacio Avila, Jr. shall have the children from Thursday at 2:00 p.m. through Sunday at 8:00 p.m. Mother shall have the children from Sunday at 8:00 p.m. through Thursday at 2:00 p.m. Mother and Ignacio Avila, Jr. shall communicate regarding the things Alan will need while he is in the care of Ignacio Avila, Jr.
5. Mother and Ignacio Avila, Jr. shall follow the DEFAULT DEPARTMENT T HOLIDAY SCHEDULE.
6. The Court REFERRED Mother and Ignacio Avila, Jr. to the Family Mediation Center (FMC) to formulate a PARENTING PLAN. Return date set for May 26, 2021. Referral executed and FILED in OPEN COURT; processed into Odyssey for both counsel to obtain.
7. Matter set for a RETURN HEARING RE: FMC MEDIATION AND NAME CHANGE OF MINOR CHILD, ALAN for May 26, 2021 at 10:00 a.m.

Attorney Laux shall prepare the order.

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INTERIM CONDITIONS:

FUTURE HEARINGS:

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1 **EXHS**

2 Michael Burton, Esq.
3 Nevada Bar Number 14351
4 **MCFARLING LAW GROUP**
5 6230 W. Desert Inn Road
6 Las Vegas, NV 89146
7 (702) 565-4335 phone
8 (702) 732-9385 fax
9 eservice@mcfarlinglaw.com
10 Attorney for Plaintiff,
11 Ignacio Avila, Jr.

7 **EIGHTH JUDICIAL DISTRICT COURT**

8 **FAMILY DIVISION**

9 **CLARK COUNTY, NEVADA**

10 **IGNACIO AVILA, JR.,**

11 Plaintiff,

12 vs.

13 **ROSIE MARTINEZ & HENRY OLIVA,**

14 Defendant.

Case Number: D-15-515892-C
Department: T

15 **PLAINTIFF'S TRIAL EXHIBITS**

Exhibit	Bates	Description	Offer	Obj.	Admit
1.	MLG000001	2016 Paternity Test Information for Henry in regards to Alan	04-16-21		04-16-21
2.	MLG000002-000006	LabCorp Paternity Test Information for Ignacio in regards to Alan 05/21/2020	04-16-21		04-16-21
3.	MLG000007-000009	2018-2019 Jazlynn's Student Period Attendance Detail 05/22/2019			04-16-21 stipulation
4.	MLG000010-000013	Jazlynn's Canvas Grade Assignments 2020			04-16-21 stipulation
5.	MLG000014-000156	One Hundred and Forty-three (143) Color Family Photographs			04-16-21 stipulation
6.	MLG000157-000175	Text Messages between Parties 03/27/2016-05/04/2017	04-16-21	04-16-21	04-16-21

7.	MLG000176 -000244	Text Messages between Parties 03/12/2017-08/25/2017	04-16-21	04-16-21	04-16-21
8.	MLG000245 -000729	WhatsApp Messages between Parties 04/05/2018-10/18/2019			
9.	MLG000730 -000819	Text Messages and WhatsApp Messages between Parties 10/19/2019-06/18/2020			
10.	MLG000820 -000901	Text Messages between Parties 08/21/2017-04/24/2020			
11.	MLG000902 -000904	WhatsApp Messages between Parties 05/29/2020-09/08/2020			
12.	MLG000905 -000941	Text Messages between Parties 06/23/2020-08/25/2020			

W7

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Las Vegas, Nevada 89129
702-240-5191 FAX: 702-240-5797

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Facsimile: (702) 240-5797
Email: twilcox@lvlawfirm.com
Attorneys for Defendants

DISTRICT COURT, FAMILY DIVISION
CLARK COUNTY, NEVADA

IGNACIO AVILA JR.,

Plaintiff,

vs.

ROSIE MARTINEZ, HENRY OLIVA,

Defendants.

Case No. D-15-515892-C
Dept. No. T

Hearing Date: 04/16/2021
Hearing Time: 10:00 a.m.

DEFENDANT'S TRIAL EXHIBITS

No	Description	Bate No:	Offer	Obj	Adm
DEFENDANT HENRY OLIVA'S FIRST LIST OF WITNESSES AND DOCUMENT PRODUCTION SERVED 12/29/2020					
A.	Original Sealed Birth Certificates for Alan and Jazlynn	DEF001- DEF002			04-16-21 w
B.	Medical Billing Statements for Alan and Jazlynn	DEF003- DEF007			04-16-21 w

**DEFENDANT HENRY OLIVA'S SECOND LIST OF WITNESSES AND
DOCUMENT PRODUCTION**

SERVED 01/08/2020

C.	Family Photos	DEF008- DEF028			04-16-21
D.	Drawings from kids to Henry	DEF029- DEF032		04-16-21	
E.	Letter from Big Lots Benefits Departments re: Health Coverage for Jazlynn and Alan	DEF033			04-16-21

Defendant's reserves the right to supplement this document
production.

DATED this 14th day of April, 2021.

BOWEN LAW OFFICES

Teddy Medlyn
JEROME R. BOWEN, ESQ.
Nevada Bar No. 4540
THEODORE M. MEDLYN, ESQ.
Nevada Bar No. 15284
Attorneys for Defendants



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

FRED PAGE, ESQ.
6930 S. CIMARRON RD., STE 140
LAS VEGAS, NV 89113

DATE: June 2, 2021
CASE: D-15-515892-C

RE CASE: IGNACIO AVILA, JR. vs. ROSIE MARTINEZ

NOTICE OF APPEAL FILED: May 28, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE DEFICIENCY

IGNACIO AVILA, JR.,

Plaintiff(s),

vs.

ROSIE MARTINEZ,

Defendant(s),

Case No: D-15-515892-C

Dept No: T

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 2 day of June 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk



**EIGHTH JUDICIAL DISTRICT COURT
CLERK OF THE COURT**

REGIONAL JUSTICE CENTER
200 LEWIS AVENUE, 3rd FL.
LAS VEGAS, NEVADA 89155-1160
(702) 671-4554

Steven D. Grierson
Clerk of the Court

Anntoinette Naumec-Miller
Court Division Administrator

June 2, 2021

Elizabeth A. Brown
Clerk of the Court
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

RE: IGNACIO AVILA, JR. vs. ROSIE MARTINEZ
D.C. CASE: D-15-515892-C

Dear Ms. Brown:

Please find enclosed a Notice of Appeal packet, filed May 28, 2021. Due to extenuating circumstances minutes from the date(s) listed below have not been included:

May 26, 2021

We do not currently have a time frame for when these minutes will be available.

If you have any questions regarding this matter, please contact me at (702) 671-0512.

Sincerely,
STEVEN D. GRIERSON, CLERK OF THE COURT

A handwritten signature in black ink, appearing to read "A Hampton", written over a horizontal line.

Amanda Hampton, Deputy Clerk