

1 **ASTA**
2 **FRED PAGE, ESQ.**
3 **NEVADA BAR NO. 6080**
4 **PAGE LAW FIRM**
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10 ***Attorney for Appellants***

Electronically Filed
Jun 16 2021 07:47 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **ROSIE MARTINEZ and HENRY**
10 **OLIVA,**

11 **Appellant,**

12 **vs.**

13 **IGNACIO AVILA, JR.,**

14 **Respondent.**

) **Supreme Court Case No.: 83023**

) **District Court Case No. D-15-515892-C**

15 **CASE APPEAL STATEMENT**

17 **TO: Appellants, ROSIE MARTINEZ and HENRY OLIVA**

18 **TO: IGNACIO AVILA, Respondent in proper person**

19 **Name of the Appellants filing this case appeal statement:**

20 **ROSIE MARTINEZ and HENRY OLIVA**

21 **1. Identify the judge issuing the decision, judgment or order appealed from:**

22 **HON. NADIN CUTTER**

23 **2. Identify each appellant and the name and address of counsel of each**

24 **appellant:**

25 **Appellants: ROSIE MARTINEZ and HENRY OLIVA**

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Counsel for Appellants:

Fred Page, Esq.
Page Law Firm
6930 South Cimarron Rd, Suite 140
Las Vegas, Nevada 89113

District Court Counsel for Appellants:

Brian J. Steinberg, Esq.
Gayle Nathan, Esq.
Steinberg Law Group
4270 South Decatur, Suite B10
Las Vegas, Nevada 89103

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509 South Sixth Street
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Soraya M. Viega, Esq.
7464 West Sahara Avenue
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Steven L. Yarmy, Esq.
7454 West Sahara Avenue
Las Vegas, Nevada 89117

Jermone Bowen, Esq.
Theodore Medlyn, Esq.
Shell Mercer, Esq.
Bowen Law Office
9960 West Cheyenne, Suite 250
Las Vegas, Nevada 89129

3. Identify each respondent in the name and address of appellate counsel, if known, for each respondent:

Respondent: IGNACIO AVILA

1 Counsel Respondent: None.

2
3 District Court Counsel:

4 Nedda Ghandi, Esq.
5 Laura A. Deeter, Esq.
6 Ghandi Deeter Law Offices
7 707 South 10th Street
8 Las Vegas, Nevada 89101

9 Emily McFarling, Esq.
10 Michael Burton, Esq.
11 Kimber Laux, Esq.
12 West Desert Inn Road, Suite
13 Las Vegas, Nevada 89146

14 4. Indicate whether any attorney identified above in response to question 3
15 or 4 is not licensed to practice law in Nevada and, if so, whether the
16 District Court granted that attorney permission to appear under SCR42:

17 None.

18 5. Indicate whether appellant was represented by appointed counsel or
19 retained counsel in the District Court:

20 Appellant was represented by retained counsel in the District Court.

21 6. Indicate whether appellant is represented by appointed or retained
22 counsel on appeal:

23 Appellant is represented by retained counsel on appeal.

24 7. Indicate whether was granted leave to proceed in *forma pauperis*, and the
25 date of entry of the District Court order granting such leave:

26 Not applicable.

27 8. Indicate the date the proceedings were commenced in District Court:

28 The Complaint for Custody was filed on June 3, 2015.

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2 9. Provide a brief description of the nature of the action and the result in the
3 District Court, including the type of judgment or order be appealed and
4 relief granted by the District Court:

5 **Nature of the Action**

6 A post-divorce action was on remand from the Court of Appeals regarding
7 custody and paternity of the minor child at issue, Alan Oliva. A paternity test was
8 taken and as a result of the paternity test it was determined that Ignacio Avila was
9 the natural father, not Henry Oliva, the father on the birth certificate. Senior Judge
10 Hardcastle ruled that because Mr. Oliva had acted as the parent for all of the
11 child's life that he was considered as being the father. That Order was appealed.
12 No Answering Brief was ever filed in response to the Opening Brief and the matter
13 was remanded for a trial. At the trial, the Court awarded the genetic father joint
14 physical custody, and refused to consider that Henry had held himself out as the
15 minor child's father for the entirety of the child's life who is now 10 years of age.
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20 **Type of Judgment or Order Being Appealed From**

21 The type of judgment or order being appealed is a Findings of Fact,
22 Conclusions of Law and Order.
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1 **Result in the District Court**

2 On October 24, 2018, a Notice of Appeal was filed. Ignacio filed an
3 Opening Brief, but no Answering Brief was filed. Because no Answering Brief
4 was filed, there was no rebuttal to the claims being made Ignacio. The Court of
5 Appeals agreed that with Ignacio’s position that the district court erred in refusing
6 to allow him to be tested regarding the paternity of Alan Oliva.
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9 Upon remand, paternity testing was conducted and it was determined that
10 Ignacio was the natural father of Alan. An evidentiary hearing was held on April
11 16, 2021, regarding the issues of paternity and custody. The district court rejected
12 the claims that Henry was the father of Alan even though he had held himself out
13 as being the father of Alan for the entirety of the ten years of Alan’s life. The
14 district court, also without making any findings under NRS 125C.0035, stripped
15 Rosie of her status of being primary physical custodian and awarded Rosie and
16 Ignacio joint physical custody.
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20 **Orders Being Appealed and Relief Granted**

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22 The orders being appealed from are the district court’s orders that that
23 granted Ignacio joint physical custody and stripped Henry of any custodial rights
24 that he had with Alan for the past ten years.
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1 10. Indicate whether the case has previously been the subject of appeal to or
2 original writ proceeding to the Supreme Court and, if so, the caption and
3 Supreme Court docket number of the prior proceeding:

4 The caption was Ignacio Avila, Jr., Appellant v. Rosie Elena Martinez,
5 Respondent. The Supreme Court case number was 77242.

6 11. Indicate whether this appeal involves child custody or visitation:


7 Appellants' appeal does involve child custody and visitation.

8 12. If this is a civil case, indicate whether this appeal involves a possibility
9 of settlement:

10 Settlement is unlikely.

11 DATED this 16th day of June 2021

12
13 PAGE LAW FIRM

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16 FRED PAGE, ESQ.

17 Nevada Bar No. 6080

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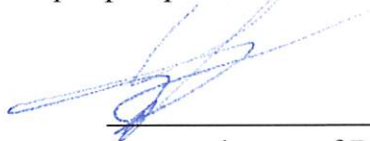
22 *Attorney for Appellants*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 16th day of June 2021, the Appellant's CASE APPEAL STATEMENT was served electronically with the Clerk of the Nevada Supreme Court and service pursuant to the United States mail, postage prepaid, was made in accordance with the master service list maintained by the Clerk of the Supreme Court to the parties listed below.

Ignacio Avila
1214 Emerald Stone Avenue
North Las Vegas, Nevada 89081
Respondent in proper person



An employee of Page Law Firm