

IN THE SUPREME COURT OF THE STATE OF NEVADA

HENRY OLIVA and ROSIE ELENA
MARTINEZ,

Appellants,

vs.

IGANCIO AVILA, JR.,

Respondent.

S.C. DOCKET NO.: 77242

D.C. Case No.: D-15-515892-C

Electronically Filed
Sep 17 2021 01:32 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' APPENDIX VOL. 2

Fred Page, Esq.
Page Law Firm
Nevada Bar No. 6080
6930 South Cimarron Road, Suite 140
Las Vegas, Nevada 89113
Attorney for Appellant

Date	Paper/Transcript	Volume	Page
12/18/2017	Affidavit of Service	2	AA000266
08/03/2018	Affidavit of Service	2	AA000339
08/30/2018	Affidavit of Service	2	AA000349
06/22/2020	Affidavit of Shell Mercer, Esq. In Support of Defendant Henry Oliva's Motion to Continue Hearing	3	AA000549- AA000557
08/04/2020	Amended Order Setting Evidentiary Hearing	3	AA000568- AA000569
01/07/2021	Answer and Counterclaim for Custody	3	AA000753- AA000759

09/15/2020	Appendix to Defendant Henry Oliva's First Amended Motion to Amend an Order Or in the Alternative Correct Omissions in the Order	3	AA000600-AA000631
12/20/2018	Case Appeal Statement	2	AA000370-AA000375
08/12/2015	Certificate of Mailing	1	AA000073-AA000074
10/20/2020	Certificate of Service	3	AA000685-AA000686
10/20/2020	Certificate of Service	3	AA000687-AA000688
08/15/2018	Certificate of Service	2	AA000347-AA000348
08/28/2020	Certificate of Service	3	AA000585-AA000586
09/1/2020	Certificate of Service	3	AA000588-AA000589
09/21/2020	Certificate of Service	3	AA000647-AA000648
01/31/2020	Certificate of Service	2	AA000480
02/09/2016	Certificate of Service (MOT to Withdraw)	1	AA000148-AA000150
02/25/2020	Clerk's Certificate / Judgment	3	AA000481
06/03/2015	Complaint for Custody, Visitation, and Child Support	1	AA000001-AA000004
08/14/2018	Counterdefendant Henry Oliva's Opposition to Motion to Reconsider the Order from June 20, 201; and Opposition to Plaintiff's Motion for Attorney's Fees and Costs and Counterdefendant's Motion for Attorney's Fees and Costs	2	AA000340-AA000346
11/05/2015	Court Minutes	1	AA000121-AA000123
01/19/2016	Court Minutes	1	AA000135-

			AA000136
10/26/2020	Court Minutes	3	AA000689- AA000690
10/27/2020	Court Minutes	3	AA000691- AA000692
11/25/2020	Court Minutes	3	AA000722- AA000723
04/16/2021	Court Minutes	3	AA000797- AA000798
05/26/2021	Court Minutes	3	AA000821- AA000822
01/25/2018	Court Minutes	2	AA000280- AA000282
03/29/2018	Court Minutes	2	AA000292- AA000296
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03/20/2020	Court Minutes	3	AA000537- AA000538
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07/31/2020	Court Minutes	3	AA000564- AA000565
01/08/2021	Defendant Henry Oliva's First Amended Witness List	3	AA000760- AA000764
09/14/2020	Defendant Henry Oliva's Motion to Amend an Order Or in the Alternative Correct Omissions in the Order	3	AA000590- AA000599
06/22/2020	Defendant Henry Oliva's Motion to Continue Hearing	3	AA000543- AA000548
11/14//2020	Defendant Henry Oliva's Opposition to Plaintiff's Motion for Reconsideratin of the Order Filed August 17, 2020, for Attorney's Fees and Costs, and for Other Related Relief in the Above-Entitled	3	AA000693- AA000721

	Matter and Countermotion for Attorney's Fees		
12/23/2020	Defendant Henry Oliva's Witness List	3	AA000750-AA000752
09/23/2020	Defendant Oliva's Reply to Plaintiff's Opposition to Motion to Obtain the Original Sealed Birth Certificates From the Nevada Department of Health and Human Services, Division of Public Behavioral Health, Vital Records and Plaintiff's Countermotion to Strike Intervenor's Improper Pleading From the Record, and for Plaintiff's Attorney's Fees and Costs Incurred Herein and for Related Relief	3	AA000650-AA000654
02/09/2016	Defendant's Financial Disclosure Form	1	AA000137-AA000147
01/31/2020	Defendant's Financial Disclosure Form	2	AA000472-AA000479
04/12/2021	Defendant's Pre-trial Memorandum	3	AA000785-AA000796
01/26/2017	Ex Parte Application to Amend Stipulated Decree of Custody	1	AA000204-AA000205
03/02/2020	Exhibit Appendix in Support of Opposition to Motion and Notice of Motion to Modify Child Support and/or Spousal Support and Countermotion 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		AA000505-AA000534
10/09/2020	Exhibit Appendix in Support of Plaintiff's Motion for Reconsideration of	3	AA000668-AA000679

	the Order Filed August 17, 2020, for Attorney's Fees and Costs, and for Other Related Relief		
04/29/2021	Findings of Fact, Conclusion of Law, and Order	3	AA000799-AA000807
11/01/2017	First Amended Complaint for Custody	2	AA000247-AA000253
03/01/2017	First Amended Decree of Custody	1	AA000212-AA000227
06/08/2015	Joint Preliminary Injunction	1	AA000005-AA000006
01/31/2020	Motion and Notice of Motion to Modify Child Support and/or Spousal Support	2	AA000458-AA000464
01/31/2020	Motion and Notice of Motion to Modify Child Support and/or Spousal Support	2	AA000465-AA000471
08/26/2020	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	3	AA000574-AA000583
11/01/2017	Motion to Join Henry Oliva As A Defendant, For the Limited Purpose of Determining Paternity of the Minor Child, Alan Oliva	2	AA000258-AA000265
07/06/2018	Motion to Reconsider the Order Entered June 20, 2018	2	AA000323-AA000338
01/22/2018	Notice of Affidavit of Attempts for Henry Oliva	2	AA0000283-AA0000286
10/18/2018	Notice of Appeal	2	AA000367-AA000369
06/22/2020	Notice of Appearance	3	AA000541-AA000542
05/25/2021	Notice of Appearance of Counsel	3	AA000819-AA000820
07/28/2016	Notice of Change of Address	1	AA000202-AA000203

03/02/2018	Notice of Change of Address	2	AA000291-
0710/2015	Notice of Counsel	1	AA000007- AA000008
04/29/2021	Notice of Entry of Finding of Fact, Conclusion of Law, and Order	3	AA000808- AA000818
03/14/2017	Notice of Entry of First Amended Decree of Custody	1	AA000228- AA000246
12/09/2020	Notice of Entry of Order	3	AA000730- AA000736
12/18/2020	Notice of Entry of Order	3	AA000743- AA000749
06/20/2018	Notice of Entry of Order	2	AA000312- AA000322
02/13/2016	Notice of Entry of Order Amending Stipulated Decree of Custody Filed July 22, 2016	1	AA000208- AA000211
07/12/2016	Notice of Entry of Order from February 23, 2016 Hearing	1	AA000161- AA000165
12/22/2015	Notice of Entry of Order from November 5, 2015 Hearing	1	AA000128- AA000133
09/25/2018	Notice of Entry of Order on Plaintiff's Motion for Reconsideration; and Judgment for an Award of Attorney's Fees	2	AA000360- AA000366
07/25/2016	Notice of Entry of Stipulated Decree of Custody	1	AA000183- AA000201
08/25/2015	Notice of Entry of Stipulation and Order for Paternity Testing	1	AA000111 AA000116
10/12/2020	Notice of Hearing	3	AA000684
06/23/2020	Notice of Hearing	3	AA000558
08/27/2021	Notice of Hearing	3	AA000584

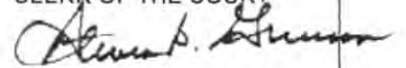
1	08/27/2021	Notice of Hearing	3	AA000587
2	09/18/2020	Notice of Hearing	3	AA000646
3	09/18/2020	Notice of Hearing	3	AA000649
4	09/05/2018	Notice of Non-Opposition to Plaintiff's Motion to Reconsider the Order Entered June 20, 2018	2	AA000350-AA000354
5				
6	01/22/2018	Notice of Non-Opposition to Plaintiff's Verified Motion to Amend the Complaint, 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	2	AA000278-AA000279
7				
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10				
11	02/01/2021	Notice of Rescheduling of Evidentiary Hearing	3	AA000769-AA000770
12				
13	03/11/2020	Notice of Rescheduling of Hearing	3	AA000535-AA000536
14				
15	07/21/2020	Notice of Rescheduling of Hearing	3	AA000562-AA000563
16				
17	08/04/2020	Notice of Rescheduling of Hearing	3	AA000566-AA000567
18				
19	02/01/2018	Notice of Withdrawal of Attorney	2	AA000288-AA000290
20				
21	04/27/2018	Notice of Withdrawal of Attorney	2	AA000297-AA000299
22				
23	05/09/2018	Notice of Withdrawal of Attorney	2	AA000300-AA000302
24				
25	03/02/2020	Opposition to Motion and Notice of Motion to Modify Child Support and/or Spousal Support and Countermotion for Modification of Custody; to Award Plaintiff Primary Physical Custody of the Minor Child Based Upon Changed	3	AA000487-AA000504
26				
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	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		
07/23/2015	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	1	AA000044-AA000065
06/15/2018	Order	2	AA000303-AA000311
08/17/2020	Order	3	AA000570-AA000573
02/08/2016	Order Amending Stipulated Decree of Custody Filed July 22, 2016	1	AA000206-AA000207
09/01/2015	Order for FMC services	1	AA00017-
11/05/2015	Order for FMC Services	1	AA000120
01/25/2018	Order for FMC Services	2	AA000287
06/28/2016	Order from February 23, 20106 Hearing	1	AA000158-AA000160
01/32/2020	Order of Reversal and Demand	3	AA000483-AA000486
01/23/2020	Order of Reversal and Remand	3	AA000680-

			AA000683
09/21/2018	Order on Plaintiff's Motion for Reconsideration; and Judgment for an Award of Attorney's Fees	2	AA000357-AA000359
12/16/2020	Order Regarding Court's November 25, 2020 Minute Order	3	AA000737-AA000742
12/09/2020	Order Regarding Court's October 26, 2020 Order	3	AA000724-AA000729
11/01/2017	Plaintiff's Exhibit Appendix	2	AA000254-AA000257
08/17/2015	Plaintiff's Financial Disclosure Form	1	AA000094-AA000110
01/19/2018	Plaintiff's Financial Disclosure Form	2	AA000267-AA000277
07/10/2015	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	1	AA000009-AA000043
10/09/2020	Plaintiff's Motion for Reconsideration of the Order Filed August 17, 2020, for Attorney's Fees and Costs, and for Other Related Relief	3	AA000655-AA000667
09/16/2020	Plaintiff's Opposition to Intervenor Henry Oliva's Motion to Obtain the Original Sealed Birth Certificates From the Nevada Department of Health and Human Services, Division of Public Behavioral Health, Vital Records and Plaintiff's Countermotion to Strike Intervenor's Improper Pleading From the Record, and for Plaintiff's Attorney's Fees and Costs Incurred Herein and for Related Relief	3	AP000632-AP000645
02/17/2016	Plaintiff's Pre-trial Memorandum	1	AA000151-AA000157
04/09/2021	Plaintiff's Pre-trial Memorandum	3	AA000774-

			AA000784
08/12/2015	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 the Minor Child's Name, and for Attorney's Fees and Costs and Opposition to Defendant's Countermotion for Paternity Testing, Mediation, for Primry Physical Custody and Defined Visitation, and for an Order for Child Support, Attorney's Fees and Other Related Relief	1	AA000075-AA000090
01/08/2016	Receipt of Copy	1	AA000134
12/28/2018	Receipt of Copy	2	AA000448
02/21/2020	Remittitur	3	AA000482
07/31/2015	Reply to Counterclaim	1	AA000066-AA000068
11/12/2015	Settlement Conference and/or Evidentiary Hearing and/or Trial Management Order	1	AA000124-AA000127
07/22/2016	Stipulated Decree of Custody	1	AA000166-AA000182
08/07/2015	Stipulation and Order for Paternity Testing	1	AA000069-AA000072
09/01/2015	Stipulation and Order to Continue Case Management Conference, Plaintiff's Motion and Defendant's Countermotion	1	AA000118-AA000119
08/14/2015	Substitution of Attorney	1	AA000091-AA000093
01/21/2021	Substitution of Attorney of Record for Plaintiff	3	AA000765-AA000768
03/25/2021	Substitution of Attorney of Record for Plaintiff	3	AA000771-AA000773
12/28/2018	Transcript re: All Pending Motions 1/25/2018	2	AA000376-AA000447

1	12/28/2018	Transcript re: All Pending Motions 9/11/2018	2	AA000449-
2				AA000457
3	08/24/2021	Transcript re: Evidentiary Hearing dated April 16, 2021	4	AA000823-
4				AA001052
5	08/24/2021	Transcript re: Hearing June 23, 2020	4	AA001053-
6				AA001086
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ACOM

AREZOU H. PIROOZI, ESQ.

NEVADA BAR# 10187

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Attorney for Plaintiff, Ignacio Avila, Jr.

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

IGNACIO AVILA, JR.

Plaintiff,

vs.

ROSIE ELENA MARTINEZ,

Defendant.

CASE NO: D-15-515892-C

DEPT NO: L

FIRST AMENDED COMPLAINT FOR CUSTODY

1. That Plaintiff, for a period of more than six (6) weeks immediately preceding the filing of this action, has been and now is, an actual, bona fide resident of the State of Nevada for more than six (6) weeks prior to the filing of this action, and still has the intent to make the State of Nevada her home, residence, and domicile for an indefinite period of time.

2. That the parties have never been married.

1 3. That there are two (2) minor children the issue of the relationship, to wit:
2 Alan Oliva, born October 18, 2011, and Jazlynn Rose Martinez Avila, born October 25,
3 2013, and the children are both residents of the State of Nevada.
4

5 4. That Plaintiff is the father of the minor children. Paternity is not disputed
6 regarding the child, Jazlynn, and Plaintiff is listed on the Birth Certificate as such.
7 Plaintiff is the father of Alan, and Plaintiff has verified this with a DNA test. Thus,
8 paternity is at issue regarding the child, Alan, and the Court should establish his
9 paternity.
10

11 5. That the Plaintiff and Defendant are fit and proper persons to be awarded
12 joint physical custody of the minor children.
13

14 6. That the Plaintiff and Defendant are fit and proper persons to be awarded
15 joint legal custody of the minor children.
16

17 7. That the Court should change the name of the child, Alan Oliva, to Alan
18 Avila, reflecting the Plaintiff's last name. The name change is not being made to avoid
19 creditors/debts, to defraud someone and/or to infringe upon the rights of another.
20

21 8. That the Birth Certificate of the child, Alan Oliva, be amended by adding the
22 Plaintiff's name as the father of the child.
23

24 9. That Child Support should be set in an amount to be determined by the Court
25 in accordance with NRS 125B.070, NRS 125B.080, and Wright v. Osburn, 114 Nev. 1367,
26 70 P.2d 1071 (1998).
27
28

1 10. That Defendant and Plaintiff shall both cover the health, dental, and vision
2 insurance for the children, with the parties equally dividing the costs for unreimbursed
3 medical expenses, pursuant to the 30/30 rule.
4

5 11. That the Tax Exemption for the minor children should be split between the
6 parties equally.
7

8 12. That in the event that Custody is unable to be resolved that this Court set an
9 Evidentiary Hearing to determine Custody.
10

11 13. That Plaintiff has had to retain the services of an attorney to litigate this
12 matter on his behalf and the Defendant should be ordered to pay Plaintiff's attorney's fees.
13

14 14. That **pursuant to NRS 125C.200, as amended by AB No. 263, Section 16,**
15 **the parties, and each of them, are hereby placed on notice of the following:**

16 That, pursuant to NRS Chapter 125, notice is hereby given to the custodial
17 parent or the parents having legal custody, that if you intend to move to a
18 place outside the State and to take the minor child with you, must, as soon
19 as possible and before the planned move, obtain the written consent of the
20 other parent and if permission is refused, must obtain an Order from the
21 Court to that effect.
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24

25 **PENALTY FOR VIOLATION OF ORDER:** THE ABDUCTION,
26 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF
27 THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS
28 PROVIDED IN NRS 193.130. NRS 200.359 provides that every person
having a limited right of custody to a child or any parent having no right of
custody to the child who willfully detains, conceals or removes the child

1 from a parent, guardian or other person having lawful custody or a right of
2 visitation of the child in violation of an order of this court, or removes the
3 child from the jurisdiction of the court without the consent of either the court
4 or all persons who have the right to custody or visitation is subject to being
punished for a category D felony as provided in NRS 193.130.

5 15. That, pursuant to NRS 125.450, notice is hereby given to the parent responsible
6 for paying support that such person is subject to 31A of NRS regarding the withholding
7 of wages and commissions for payments of support. These statutes and provisions require
8 that if an order issued by a Court of this or any other state, or pursuant to an expedited
9 process, provides for payment for the support of a child, that order is a judgment by
10 operation of law. Such a judgment may not be retroactively modified or adjusted and
11 may be enforced as other judgments of this State. Thus, a parent responsible for paying
12 child support shall be subject to having his or her wages or commission immediately
13 subject to a Wage Assignment pursuant to the provisions of the above-cited statute upon
14 presentation of said child support Order to said parent's employer.
15
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19 16. That notice is hereby given, pursuant to NRS 125B.145, that the Court is
20 required to review child support obligations upon request by the parent, legal guardian or
21 an attorney every three years to determine if the support being paid is within the formula
22 of NRS 125B.070.
23

24 17. That both parties are subject to the terms imposed by the HAGUE
25 CONVENTION of October 25, 1980, adopted by the 14th Session of the Hague
26 Conference on Private International Law, in accord with NRS 125.510(7), and that the
27
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1 United States is the country, and Nevada is the state of habitual residence of the minor
2 child, in accordance with NRS 125.510(8).

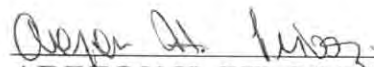
3
4 18. That this Court has subject matter jurisdiction to determine custody in
5 accordance with the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. Section
6 1738A(c)(2)(A), and the Uniform Child Custody Jurisdiction Enforcement Act
7 (UCCJEA), Section 3(a)(1), NRS 125A.050. That NEVADA is the "HOME STATE"
8 within the meaning of UCCJEA Section 2(5) and PKPA 28 U.S.C. Section 1738A (b)(4),
9 NRS 125A.085.
10

11 **WHEREFORE**, Plaintiff prays for a Judgment as follows:
12

- 13 1. That the Court grant the relief requested in this Complaint for Custody;
14
15 2. For such other relief as the Court finds to be just and proper.

16 **DATED** this 31st day of October, 2017.

Respectfully Submitted by:

17
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19 
20 **AREZOU H. PIROOZI, ESQ.**
21 NEVADA BAR# 10187
22 **PIROOZI LAW GROUP, PLLC.**
23 509 SOUTH SIXTH STREET
24 LAS VEGAS, NV 89101
25 TEL: (702) 260-1010
26 FAX: (702) 364-2010
27 EMAIL: apiroozi@piroozilawgroup.com
28 Attorney for Plaintiff, Ignacio Ayila, Jr.

1
2 **VERIFICATION**

3 STATE OF NEVADA)
4) ss:
5 COUNTY OF CLARK)

6 IGNACIO AVILA, JR., under penalty of perjury, being first duly sworn, deposes
7 and says:


8 That he is the Plaintiff in the above entitled action; that he has read the foregoing
9 **FIRST AMENDED COMPLAINT FOR CUSTODY** and knows the contents thereof;
10 that the same is true of his own knowledge, except for those matters therein contained
11 stated upon information and belief, and as to those matters, he believes them to be true.
12

13
14 DATED this 2nd day of August, 2017

15
16 By: 

17 IGNACIO AVILA, JR.

18
19 SUBSCRIBED and SWORN to before me
20 this 2nd day of August, 2017

21 
22 NOTARY PUBLIC in and for said
23 County and State



1
2
3 **ACKNOWLEDGMENT**

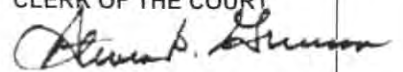
4 STATE OF NEVADA)
5) ss:
6 COUNTY OF CLARK)

7 On this 2nd day of August, 2017, before me, the undersigned Notary
8 Public in and for the said County and State, personally appeared, IGNACIO AVILA, JR.,
9 known to me to be the person described in and who executed the foregoing **FIRST**
10 **AMENDED COMPLAINT FOR CUSTODY**, and who acknowledged to me that he did
11 so freely and voluntarily and for the uses and purposes therein mentioned.

12 WITNESS my hand and official seal.

13
14 
15 NOTARY PUBLIC





EXHS

AREZOU H. PIROOZI, ESQ.

NEVADA BAR# 10187

PIROOZI LAW GROUP, PLLC.

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EMAIL: apiroozi@piroozilawgroup.com

Attorney for Plaintiff, Ignacio Avila, Jr.

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

IGNACIO AVILA, JR.

Plaintiff,

vs.

ROSIE ELENA MARTINEZ,

Defendant.

CASE NO: D-15-515892-C

DEPT NO: L

PLAINTIFF'S EXHIBIT APPENDIX

COMES NOW Plaintiff, Plaintiff, IGNACIO AVILA, JR., by and through his attorney of record, AREZOU H. PIROOZI, ESQ., of PIROOZI LAW GROUP, PLLC., and submits the following Exhibits in support of Plaintiff's VERIFIED MOTION AMEND THE COMPLAINT FOR CUSTODY, TO ESTABLISH JOINT LEGAL AND PRIMARY PHYSICAL CUSTODY, TO SET ASIDE THE CUSTODY DECREE, TO MODIFY CUSTODY, FOR CHILD SUPPORT, AND FOR ATTORNEY'S FEES AND COSTS.

1 Plaintiff understands that these Exhibits are not considered substantive evidence in
2 his case until formally admitted into evidence.

3 **Table of Contents:**

4
5 1. **Exhibit 1** – Results of DNA test.

6 **DATED** this 3rd day of October, 2017.

Respectfully Submitted by:

9 

10 **AREZOU H. PIROOZI, ESQ.**

11 NEVADA BAR# 10187

12 **PIROOZI LAW GROUP, PLLC.**

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14 LAS VEGAS, NV 89101

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16 FAX: (702) 364-2010

17 EMAIL: apiroozi@piroozilawgroup.com

18 Attorney for Plaintiff, Ignacio Avila, Jr.

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EXHIBIT 1



Absolute Drug, Alcohol & DNA Testing Clinics

DNA Test Report

Not Court Admissible
No Chain of Custody

Collection	SampleID	Name	Relationship	Sample Type	Race
1/20/2017	FT_851AF	Ignacio Avila Jr.	Alleged Father	Standard	Unknown
1/20/2017	FT_851C	Alan Oliva	Child	Standard	

CONCLUSION:

The alleged father cannot be excluded as the biological father of the child. The probability of paternity is 99.99% as compared to an untested, unrelated man of the Caucasian population. A prior probability of 0.5 was assumed.

STATISTICS:

Paternity Likelihood: 35/8742
Probability: 99.99%

I verify that I have reviewed and agree with the interpretation of the results.

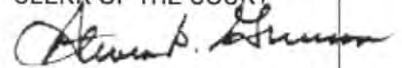
Zach Gaskin, Chief Scientific Officer
Thursday, January 26, 2017

For Report Consultation Contact:

Absolute Drug & DNA Testing
620 S. 11th St. Ste. 120
Las Vegas, NV 89101
702-498-9405

DATA:

Marker	FT_851AF	FT_851C	PI
AMEL	X,Y	X,Y	N/A
D3S1358	15	15,16	1.97
D1S1656	16,18	12,18	50.00
D2S441	10	10,11	2.48
D10S1248	13,15	13,15	2.06
D13S317	10,12	9,12	0.81
Penta E	16	0	N/A
D16S539	12,13	11,13	1.49
D18S51	17	14,17	4.06
D2S1338	19,22	17,19	1.82
CSF1PO	11	11	3.14
Penta D	10	0	N/A
TH01	7,9,3	7,9,3	2.01
vWA	17	17,19	2.04
D21S11	29	29	4.88
D7S820	11,12	8,12	1.69
D5S818	11	11,12	1.27
TPOX	8,11	8,11	1.43
DYS391	9	0	N/A
D8S1179	13	13,15	1.54
D12S391	17,18	17,21	1.00
D19S433	14,15	13,2,14	0.73
FGA	24,26	24	3.64
D22S1045	0	0	N/A



MOT

AREZOU H. PIROOZI, ESQ.

NEVADA BAR# 10187

PIROOZI LAW GROUP, PLLC.

509 SOUTH SIXTH STREET

LAS VEGAS, NV 89101

TEL: (702) 260-1010

FAX: (702) 364-2010

EMAIL: apiroozi@piroozilawgroup.com

Attorney for Plaintiff, Ignacio Avila, Jr.

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

IGNACIO AVILA, JR.

Plaintiff,

vs.

ROSIE ELENA MARTINEZ,

Defendant.

CASE NO: D-15-515892-C

DEPT. NO: L

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

MOTION TO JOIN HENRY OLIVA AS A DEFENDANT, FOR THE LIMITED PURPOSE OF DETERMINING PATERNITY OF THE MINOR CHILD, ALAN OLIVA.

1 COMES NOW, Plaintiff, IGNACIO AVILA, JR. ("Ignacio"), by and through his
2 attorney of record, AREZOU H. PIROOZI, ESQ., of PIROOZI LAW GROUP, PLLC.,
3 and hereby files this Motion to Join Henry Oliva As a Defendant, For the Limited Purpose
4 of Determining Paternity of The Minor Child, Alan Oliva.
5

6 The Plaintiff prays for the following relief:

- 7
- 8 1. For an Order that the Court join Henry Oliva as a necessary party to this case,
9 for the limited purpose of determining custody of the minor child, Alan Oliva; and
 - 10 2. For such other relief as this Court deems just and proper in the premises.
11

12 DATED this 31st day of October 2017.

Respectfully Submitted by:

13
14 

15 AREZOU H. PIROOZI, ESQ.

16 NEVADA BAR# 10187

17 PIROOZI LAW GROUP, PLLC.

18 509 SOUTH SIXTH STREET

19 LAS VEGAS, NV 89101

20 TEL: (702) 260-1010

21 FAX: (702) 364-2010

22 EMAIL: apiroozi@piroozilawgroup.com

23 Attorney for Plaintiff, Ignacio Avila, Jr.
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NOTICE OF MOTION

TO: HENRY OLIVA, necessary party as Defendant;

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled court on the _____ day of 11/29/2017, 2017, at the hour of _____ o'clock ____m. of said day, in Department __ of said Court.

DATED this 30th day of October, 2017.

Respectfully Submitted by:


AREZOU H. PIROOZI, ESQ.
NEVADA BAR# 10187
PIROOZI LAW GROUP, PLLC.
509 SOUTH SIXTH STREET
LAS VEGAS, NV 89101
TEL: (702) 260-1010
FAX: (702) 364-2010
EMAIL: apiroozi@piroozilawgroup.com
Attorney for Plaintiff, IGNACIO AVILA, JR.

POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS/RELEVANT PROCEDURAL HISTORY

The parties were never married. There are two minor children the issue of the relationship, to wit: Alan Oliva, born October 18, 2011, and Jazlynn Rose Martinez Avila, born October 25, 2013. A Custody Decree was filed on July 16, 2016, granting the parties joint legal custody of Jazlynn, and granting Rosie primary physical custody of Jazlynn.

1 Custody of Alan was not at issue or litigated at the time, because Ignacio did not know
2 that Alan was his child. He only found out recently, on January 20, 2017, that Alan was
3 his son, by a DNA test. Previously, Rosie had told Ignacio that Henry Oliva was Alan's
4 father. Henry's name is on the child's birth certificate.
5

6 Ignacio has, along with this Motion, filed a Verified Motion to Amend the
7 Complaint for Custody, To Establish Joint Legal and Joint Physical Custody, To Set Aside
8 the Custody Decree, To Modify Custody, For Child Support, And for Attorney's Fees and
9 Costs. Because Henry is listed as the father on Alan's birth certificate, it is necessary to
10 notify Henry and join him to the instant action, so that, if he believes it is appropriate to
11 do so, he may contest Ignacio's claim to paternity of Alan.
12
13

14 II.

15 ARGUMENT

16 Ignacio hereby incorporates the facts and analysis from section I of this Motion.
17
18

19 **A. HENRY SHOULD BE JOINED TO THIS CASE AS A DEFENDANT, 20 AS A NECESSARY PARTY, FOR THE LIMITED PURPOSE OF 21 DETERMINING PATERNITY OF THE CHILD, ALAN.**

22 **NRCP 19** states, in pertinent part:

23 (a) A person who is subject to service of process and whose joinder will not deprive
24 the court of jurisdiction over the subject matter of the action shall be joined as a party in
25 the action if (1) in the person's absence complete relief cannot be accorded among those
26 already parties, or (2) the person claims an interest relating to the subject of the action and
27 is so situated that the disposition of the action in the person's absence may (i) as a practical
28 matter impair or impede the person's ability to protect that interest or (ii) leave any of the
persons already parties subject to a substantial risk of incurring double, multiple, or
otherwise inconsistent obligations by reason of the claimed interest. If the person has not
been so joined, the court shall order that the person be made a party. If the person should

1 join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper
2 case, an involuntary plaintiff.

3 In this case, Henry must be joined as a party to this case, for the purpose of
4 determining paternity, because, in his absence, complete relief cannot be accorded among
5 those already parties, and because Henry has claimed an interest relating to the subject of
6 the action, in that he has held himself out to be Alan's father by having his name on the
7 child's Birth Certificate, and by participating, to some degree, in Alan's life via his
8 relationship with Rosie.
9
10

11 The child whose paternity is at issue, Alan, is five (5) years old. As detailed in
12 Alan's Motion noted *supra*, he is seeking joint custody of Alan, based, in part, on the fact
13 that he very recently found out that he is, in fact, Alan's biological father. Thus, Henry is
14 a necessary party to this case, for the limited purpose of determining paternity, so that he
15 may, if he sees fit, challenge Ignacio's assertion of paternity of Alan.
16
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III.

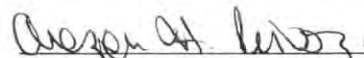
CONCLUSION

The Plaintiff prays for the following relief:

1. For an Order that the Court join Henry Oliva as a necessary party to this case, for the limited purpose of determining custody of the minor child, Alan Oliva; and
2. For such other relief as this Court deems just and proper in the premises.

DATED this 31st day of October, 2017.

Respectfully Submitted by:



AREZOU H. PIROOZI, ESQ.

NEVADA BAR# 10187

PIROOZI LAW GROUP, PLLC.

509 SOUTH SIXTH STREET

LAS VEGAS, NV 89101

TEL: (702) 260-1010

FAX: (702) 364-2010

EMAIL: apiroozi@piroozilawgroup.com

Attorney for Plaintiff, Ignacio Avila, Jr.

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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)


IGNACIO AVILA, JR., being first duly sworn, deposes and says:

That he is the Defendant in the above-entitled action; that he has read the foregoing
MOTION TO JOIN HENRY OLIVA AS A DEFENDANT, FOR THE LIMITED
PURPOSE OF DETERMINING PATERNITY OF THE MINOR CHILD, ALAN
OLIVA and know the contents thereof; the same is true of his own knowledge except as
to those matters therein stated on information and belief and, as to those matters, he
believes them to be true.

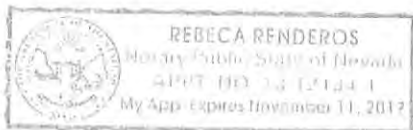


IGNACIO AVILA, JR.

SUBSCRIBED and SWORN to before me
this 20th day of August, 2017



NOTARY PUBLIC in and for said
County and State



MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Ignacio Avila, Jr.

Plaintiff/Petitioner

Rosine Elena Martinez

Defendant/Respondent

Case No.

D-15-515892-C

Dept.

L

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1 Select either the \$25 or \$0 filing fee in the box below.

- ☒ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2 Select the \$0, \$129 or \$57 filing fee in the box below.

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☐ \$0 ☒ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition:

Ignacio Avila, Jr.

Date

10/31/15

Signature of Party or Preparer



AOS

**DISTRICT COURT , CLARK COUNTY
CLARK COUNTY, NEVADA**

Steven D. Grierson

IGNACIO AVILA JR

Plaintiff

VS

ROSIE ELENA MARTINEZ

Defendant

CASE NO: D-15-515892-C

HEARING DATE/TIME:

DEPT NO:

AFFIDAVIT OF SERVICE

ALLAN SANDOVAL 2636260 being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the FIRST AMENDED COMPLAINT FOR CUSTODY; VERIFIED MOTION TO AMEND THE COMPLAINT FOR CUSTODY; PLAINTIFF'S EXHIBIT APPENDIX; MOTION TO JOIN HENRY OLIVA AS A DEFENDANT, on the 14th day of November, 2017 and served the same on the 15th day of November, 2017, at 16:41 by:

delivering and leaving a copy with the servee ROSIE ELENA MARTINEZ at (address) 5005 LOSEE RD. #3019, NORTH LAS VEGAS NV 89081

Pursuant to NRS 53.045

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

EXECUTED this 15 day of Nov, 2017.

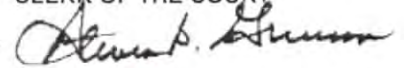
[Signature]

ALLAN SANDOVAL 2636260

FDF

Name: AREZOU H. PIROOZI, ESQ.
Address: 509 SOUTH SIXTH STREET
LAS VEGAS, NV 89101
Phone: (702) 260-1010
Email: apiroozi@piroozilawgroup.com
Attorney for Ignacio Avila, Jr.
Nevada State Bar No. 10187

Electronically Filed
1/19/2018 2:42 PM
Steven D. Grierson
CLERK OF THE COURT



District Judicial District Court

Clark County Nevada

<u>IGNACIO AVILA, JR.</u> Plaintiff, vs. <u>ROSIE ELENA MARTINEZ</u> Defendant.	Case No. <u>D-15-515892-C</u> Dept. <u>1</u>
--	---

GENERAL FINANCIAL DISCLOSURE FORM

A. Personal Information:

1. What is your full name? (*first, middle, last*) Ignacio Avila, Jr.
2. How old are you? 30
3. What is your date of birth? 07/18/1986
4. What is your highest level of education? COLLEGE

B. Employment Information:

1. Are you currently employed/ self-employed? (☒ check one)
☐ No
☒ Yes If yes, complete the table below. Attached an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)
10/22/2008	CAESARS PALACE	WAREHOUSE	MON-FRI	3AM-11AM
		ATTENDANT		

2. Are you disabled? (☒ check one)

☒ No

☐ Yes

If yes, what is your level of disability? _____

What agency certified you disabled? _____

What is the nature of your disability? _____

- #### C. Prior Employment: If you are unemployed or have been working at your current job for less than 2 years, complete the following information.

Prior Employer: _____ Date of Hire: _____ Date of Termination: _____
Reason for Leaving: _____

Monthly Personal Income Schedule

A. Year-to-date Income.

As of the pay period ending 11/30/2017 my gross year to date pay is 49,549.50

B. Determine your Gross Monthly Income.

Hourly Wage

\$22.25	×	40.00	=	\$890.00	×	52	=	\$46,280.00	÷	12	=	\$3,856.67
Hourly Wage		Number of hours worked per week		Weekly Income		Weeks		Annual Income		Months		Gross Monthly Income

Annual Salary

	÷	12	=	\$0.00
Annual Income		Months		Gross Monthly Income

C. Other Sources of Income.

Source of Income	Frequency	Amount	12 Month Average
Annuity or Trust Income			
Bonuses			
Car, Housing, or Other allowance:			
Commissions or Tips:			
Net Rental Income:			
Overtime Pay			
Pension/Retirement:			
Social Security Income (SSI):			
Social Security Disability (SSD):			
Spousal Support			
Child Support			
Workman's Compensation			
Other:			
Total Average Other Income Received			\$0.00

Total Average Gross Monthly Income (add totals from B and C above)	\$3,856.67
--	------------

D. Monthly Deductions

	Type of Deduction	Amount
1.	Court Ordered Child Support (automatically deducted from paycheck)	
2.	Federal Health Savings Plan	
3.	Federal Income Tax	349.00
4.	Health Insurance Amount for you: _____ For Opposing Party: _____ For your Child(ren): _____	0.00
5.	Life, Disability, or Other Insurance Premiums	
6.	Medicare	
7.	Retirement, Pension, IRA, or 401(k)	
8.	Savings	
9.	Social Security	
10.	Union Dues	55.00
11.	Other: (Type of Deduction)	
Total Monthly Deductions (Lines 1-11)		404.00

Business/Self-Employment Income & Expense Schedule

A. Business Income:

What is your average gross (pre-tax) monthly income/revenue from self-employment or businesses?
\$ _____

B. Business Expenses: Attach an additional page if needed.

Type of Business Expense	Frequency	Amount	12 Month Average
Advertising			
Car and truck used for business			
Commissions, wages or fees			
Business Entertainment/Travel			
Insurance			
Legal and professional			
Mortgage or Rent			
Pension and profit-sharing plans			
Repairs and maintenance			
Supplies			
Taxes and licenses (include est. tax payments)			
Utilities			
Other:			
Total Average Business Expenses			0.00

Personal Expense Schedule (Monthly)

A. Fill in the table with the amount of money **you** spend each month on the following expenses and check whether you pay the expense for you, for the other party, or for both of you.

Expense	Monthly Amount I Pay	For Me	Other Party	For Both
Alimony/Spousal Support				
Auto Insurance	80.00	✓		
Car Loan/Lease Payment	358.05	✓		
Cell Phone	360.00			✓
Child Support (not deducted from pay)	450.00		✓	
Clothing, Shoes, Etc...	75.00		✓	
Credit Card Payments (minimum due)	25.00	✓		
Dry Cleaning				
Electric	50.00			✓
Food (groceries & restaurants)	250.00			✓
Fuel	240.00			✓
Gas (for home)	30.00			✓
Health Insurance (not deducted from pay)				
HOA	42.50			✓
Home Insurance (if not included in mortgage)				
Home Phone				
Internet/Cable	58.00			✓
Lawn Care				
Membership Fees				
Mortgage/Rent/Lease	911.00			✓
Pest Control				
Pets				
Pool Service				
Property Taxes (if not included in mortgage)				
Security				
Sewer				
Student Loans				
Unreimbursed Medical Expense				
Water	60.00			✓
Other:				
Total Monthly Expenses	2,989.55			

Household Information

- A. Fill in the table below with the name and date of birth of each child, the person the child is living with, and whether the child is from this relationship. Attached a separate sheet if needed.

	Child's Name	Child's DOB	Whom is this child living with?	Is this child from this relationship?	Has this child been certified as special needs/disabled?
1 st	JAZLYNN AVILA	10/25/13	MOTHER	YES	
2 nd	ALAN OLIVA	10/18/11	MOTHER	YES	
3 rd	HENRY OLIVA	11/22	MOTHER	NO	
4 th					

- B. Fill in the table below with the amount of money you spend each month on the following expenses for each child.

Type of Expense	1 st Child	2 nd Child	3 rd Child	4 th Child
Cellular Phone				
Child Care				
Clothing	50.00	50.00		
Education				
Entertainment	50.00			
Extracurricular & Sports				
Health Insurance (if not deducted from pay)				
Summer Camp/Programs				
Transportation Costs for Visitation	100.00			
Unreimbursed Medical Expenses				
Vehicle				
Other:				
Total Monthly Expenses	200.00	50.00	0.00	0.00

- C. Fill in the table below with the names, ages, and the amount of money contributed by all persons living in the home over the age of eighteen. If more than 4 adult household members attached a separate sheet.

Name	Age	Person's Relationship to You (i.e. sister, friend, cousin, etc...)	Monthly Contribution

Personal Asset and Debt Chart

A. Complete this chart by listing all of your assets, the value of each, the amount owed on each, and whose name the asset or debt is under. If more than 15 assets, attach a separate sheet.

Line	Description of Asset and Debt Thereon	Gross Value	Total Amount Owed	Net Value	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.	HOUSE	\$ 138,000.00	- \$ 132,982.00	= \$ 5,018.00	MINE
2.	TRUCK	\$ 4,000.00	- \$ 1,740.00	= \$ 2,260.00	MINE
3.		\$	- \$	= \$ 0.00	
4.		\$	- \$	= \$ 0.00	
5.		\$	- \$	= \$ 0.00	
6.		\$	- \$	= \$ 0.00	
7.		\$	- \$	= \$ 0.00	
8.		\$	- \$	= \$ 0.00	
9.		\$	- \$	= \$ 0.00	
10.		\$	- \$	= \$ 0.00	
11.		\$	- \$	= \$ 0.00	
12.		\$	- \$	= \$ 0.00	
13.		\$	- \$	= \$ 0.00	
14.		\$	- \$	= \$ 0.00	
15.		\$	- \$	= \$ 0.00	
Total Value of Assets (add lines 1-15)		\$ 142,000.00	- \$ 134,722.00	= \$ 7,278.00	

B. Complete this chart by listing all of your unsecured debt, the amount owed on each account, and whose name the debt is under. If more than 5 unsecured debts, attach a separate sheet.

Line #	Description of Credit Card or Other Unsecured Debt	Total Amount owed	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$	
2.		\$	
3.		\$	
4.		\$	
5.		\$	
6.		\$	
Total Unsecured Debt (add lines 1-6)		\$ 0.00	

CERTIFICATION

Attorney Information: Complete the following sentences:

1. I (have/have not) HAVE retained an attorney for this case.
2. As of the date of today, the attorney has been paid a total of \$ 6,500.00 on my behalf.
3. I have a credit with my attorney in the amount of \$ _____.
4. I currently owe my attorney a total of \$ 0.00.
5. I owe my prior attorney a total of \$ _____.

IMPORTANT: Read the following paragraphs carefully and initial each one.

JS I swear or affirm under penalty of perjury that I have read and followed all instructions in completing this Financial Disclosure Form. I understand that, by my signature, I guarantee the truthfulness of the information on this Form. I also understand that if I knowingly make false statements I may be subject to punishment, including contempt of court.

JS I have attached a copy of my 3 most recent pay stubs to this form.

_____ I have attached a copy of my most recent YTD income statement/P&L statement to this form, if self-employed.

_____ I have not attached a copy of my pay stubs to this form because I am currently unemployed.

Signature



Date

12/14/2017

CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury of the State of Nevada that the following is true and correct:

That on (date) 1-19-18 service of the General Financial Disclosure Form was made to the following interested parties in the following manner:

☒ Via 1st Class U.S. Mail, postage fully prepaid addressed as follows:

Rosie Elena Martinez 5005 LOSEE RD. #3019,
North Las Vegas, NV 89031

☐ Via Electronic Service, in accordance with the Master Service List, pursuant to NEFCR 9, to:

☐ Via Facsimile and/or Email Pursuant to the Consent of Service by Electronic Means on file herein to: _____

Executed on the 19th day of January, 2018.

Signature 

IGUACIO AVILA JR
126936 70171204 175301

EMPLOYER:CLV
PROPERTY:H30

EE NO: 800381815
DEPT NO: 01815

BULLETIN BOARD

Reminder, if you have had a change in your personal financial situation or lifestyle you may want to consider submitting a revised IRS form W-4 to update your status and/or exemptions. Please see your HR department to complete a new form. Obtain your W2 sooner and avoid waiting for the mail, opt in at MY PAYROLL ONLINE <https://caesars.docagent.net> to view and print your W-2 online. Please ensure that your address is current as well.

SPECIAL INFORMATION

PTO/VAC TAKEN PAY PD	TAX STATUS: S	CHECK NO: 13715271
PTO/VAC AVAILABLE 88.00	EXEMPTIONS: FED: 03 STATE: 00	CHECK DATE: 12/07/2017
PTO/VAC TAKEN YTD 32.00	STATE CODE: NV	PERIOD ENDING: 11/30/2017
	ADD'L W/H:	PAY FREQUENCY: B
		PRIMARY JOB BASE RATE: 22.2500

	GROSS	PRE TAX	TAXABLE WAGES	TAXES	DEDUCTIONS	NET PAY
CURRENT	2024.75		2024.75	358.25	1666.50	
Y-T-D	49549.50		49549.50	8805.33	40744.17	

HOURS AND EARNINGS						TAXES AND DEDUCTIONS		
DESCRIPTION	HOURS	CURRENT		Y-T-D		DESCRIPTION	CURRENT	
		RATE	EARNINGS	HOURS	EARNINGS		AMOUNT	Y-T-D
QTRTRN					235.72	FEDERAL TX	203.35	5014.79
TR2 CRDTS					80.77	FICA TAXES	154.90	3790.54
REGULAR	79.00	22.2500	1759.75	1837.50	40529.33	QTRTRN		158.75
OVERTIME				100.75	3315.28	TR2 CRDTS		54.40
HRS ADJUST					245.60	POL ACTION	5.00	52.00
VACATION				152.00	3372.40	UNION DUES	55.00	660.00
HOLIDAY		22.2500		54.00	1770.40	DUES ASMT	1.95	96.92
HOLIDAY	5.00	22.2500	111.25			DIRECT DEP	1605.55	39722.10
TOTAL	87.00		2024.75	2154.25	49549.50	TOTAL	2024.75	49549.50

CAESARS PALACE
ONE HARRAH'S COURT
LAS VEGAS, NV 89119

NO. 13715271

DATE 12/07/2017

NAME

IGUACIO AVILA JR
1909 SIERRA VALLEY WAY
LAS VEGAS, NV 89126

BANK DEPOSIT ACCOUNT

***291230

AMOUNT

*****1605.55*

NON-NEGOTIABLE

DIRECT DEPOSIT ADVICE

AA000275

IGNACIO AVILA JR
12/5/29 20171104 185308

EMPLOYER:CLV
PROPERTY:430

EE N°: 800321815
DEPT 03: 01615

BULLETIN BOARD

SPECIAL INFORMATION

PTO/VAC TAKEN PAY ED TAX STATUS: S CHECK NO: 13620453
PTO/VAC AVAILABLE 88.00 EXEMPTIONS: FED: 03 STATE: 00 CHECK DATE: 11/09/2017
PTO/VAC TAKEN YTD 32.00 STATE CODE: NV PERIOD ENDING: 11/02/2017
ADD'L W/H: PAY FREQUENCY: B
PRIMARY JOB BASE RATE: 22.2500

	GROSS	PRE TAX	TAXABLE WAGES	TAXES	DEDUCTIONS	NET PAY
CURRENT	1780.00		1780.00	301.87	1478.13	
Y-T-D	45566.75		45566.75	8104.90	37461.85	

HOURS AND EARNINGS					TAXES AND DEDUCTIONS		
DESCRIPTION	HOURS	CURRENT RATE	EARNINGS	Y-T-D HOURS	EARNINGS	DESCRIPTION	CURRENT AMOUNT
QTRTRN					235.72	FEDERAL TX	165.70
TR2 CRDTS					80.77	FICA TAXES	136.17
REGULAR	40.00	22.2500	890.00	1678.50	36991.58	QTRTRN	
OVERTIME				100.75	3315.26	TR2 CRDTS	158.75
HRS ADJUST					245.60	POL ACTION	54.40
VACATION	40.00	22.2500	890.00	152.00	3372.40	UNION DUES	48.00
HOLIDAY				48.00	1325.40	DUES ASMT	605.00
						DIRECT DEP	2.00
							88.97
							36506.73
TOTAL	80.00		1780.00	1879.25	45566.75	TOTAL	1780.00
							45566.75

CAESARS PALACE
ONE HARRAH'S COURT
LAS VEGAS, NV 89119

NAME

IGNACIO AVILA JR
1605 SIERRA VALLEY WAY
LAS VEGAS, NV 89120

DIRECT DEPOSIT ACCOUNT

NO: 13620453

DATE: 11/09/2017

AMOUNT

\$*****1419.13*

***193290

NON-NEGOTIABLE

DIRECT DEPOSIT ADVICE

AA000276

SPECIAL INFORMATION		CHECK NO:		37082722		
PTO/VAC TAKEN FAY PD		TAX STATUS:		CHECK DATE:		
PTO/VAC AVAILABLE		FED: 03 STATE: 00		11/22/2017		
PTO/VAC TAKEN YTD		STATE CODE: NV		PERIOD ENDING:		
		ADD'L W/H:		11/16/2017		
				PAY FREQUENCY: B		
				PRIMARY JOB BASE RATE: 22.2500		
GROSS		PRE TAX	TAXABLE WAGES	TAXES	DEDUCTIONS	NET PAY
CURRENT	1958.00		1958.00	342.10	1615.82	
Y-T-D	47524.75		47524.75	8447.08	39077.67	

*****1609.82*

NON-NEGOTIABLE

DIRECT DEPOSIT ADVICE

AA000277



NOT

1 AREZOU H. PIROOZI, ESQ.

Nevada Bar# 10187

2 PIROOZI LAW GROUP, PLLC.

3 509 SOUTH SIXTH STREET

LAS VEGAS, NV 89101

4 TEL: (702) 260-1010

FAX: (702) 364-2010

5 EMAIL: apiroozi@piroozilawgroup.com

6 Attorney for Plaintiff, Ignacio Avila, Jr.

7 **DISTRICT COURT**
8 **FAMILY DIVISION**
9 **CLARK COUNTY, NEVADA**

10 IGNACIO AVILA, JR.,

11 Plaintiff,

12 vs.

13 ROSIE ELENA MARTINEZ,

14 Defendant.

CASE NO: D-15-515892-C

DEPT: L

HEARING DATE: January 25, 2018

HEARING TIME: 9:00 a.m.

ORAL ARGUMENT REQUESTED? YES

16 **NOTICE OF NON-OPPOSITION TO PLAINTIFF'S VERIFIED MOTION TO AMEND THE**
17 **COMPLAINT FOR CUSTODY, TO ESTABLISH JOINT LEGAL AND JOINT PHYSICAL**
18 **CUSTODY, TO SET ASIDE THE CUSTODY DECREE, TO MODIFY CUSTODY, FOR**
19 **CHILD SUPPORT, AND FOR ATTORNEY'S FEES AND COSTS.**

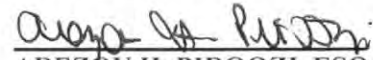
20 COMES NOW Plaintiff, IGNACIO AVILA, JR., by and through his attorney of record,
21 AREZOU H. PIROOZI, ESQ., of PIROOZI LAW GROUP, PLLC, and hereby provides the Court
22 Notice of Non-Opposition to his MOTION which was filed with this Court on November 1, 2017, and
23 personally served on Defendant on November 15, 2017. (Please see attached the Affidavit Of Service
24 as "EXHIBIT 1") Pursuant to EDCR 2.20(e), Defendant was afforded ten (10) days to file an
25 Opposition and the failure "to serve and file written Opposition may be constructed as an admission
26 that the Motion is meritorious and consent to granting the same." The last day for Defendant to file an
27 Opposition to Plaintiff's Emergency Motion was on November 29, 2017. Pursuant to EDCR 2.23 (b),
28 AREZOU H. PIROOZI, ESQ., of PIROOZI LAW GROUP, PLLC, will prepare and submit to

1 chambers an Order together with a courtesy copy of this Notice, and respectfully request that
2 the Court (1) consider his Motion on its merits without oral argument; (2) grant the same and enter
3 and Order granting **PLAINTIFF'S VERIFIED MOTION TO AMEND THE COMPLAINT FOR**
4 **CUSTODY, TO ESTABLISH JOINT LEGAL AND JOINT PHYSICAL CUSTODY, TO SET**
5 **ASIDE THE CUSTODY DECREE, TO MODIFY CUSTODY, FOR CHILD SUPPORT, AND**
6 **FOR ATTORNEY'S FEES AND COSTS;** and, taking the hearing presently scheduled for January
7 25, 2018, at 9:00 a.m. off calendar.
8

9 **Rule 2.23** Motions Decided without oral argument at the request of the judge, the clerk must
10 be promptly bring to the judge's attention every motion to which with no response has been timely
11 filed. The clerk must also submit all motions, whether responded to or not, to the judge not less than 3
12 days before scheduled hearing. If the time to oppose a motion has passed and no opposition has been
13 filed, counsel for the moving.
14

15 **DATED** this 9th day of January, 2018.

Respectfully submitted by:

16 
17 **AREZOU H. PIROOZI, ESQ.**
18 Nevada Bar# 10187
19 PIROOZI LAW GROUP, PLLC.
20 509 SOUTH SIXTH STREET
21 LAS VEGAS, NV 89101
22 TEL: (702) 260-1010
23 FAX: (702) 364-2010
24 EMAIL: apiroozi@piroozilawgroup.com
25 Attorney for Plaintiff, Ignacio Avila, Jr.
26
27
28

**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:

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

Argument by Ms. Piroozi, Ms. Veiga, and Mr. Yarmy regarding Plaintiff's Motions and allegations of

PRINT DATE:	01/29/2018	Page 1 of 3	Minutes Date:	January 25, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

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:

January 25, 2018 9:00 AM Motion
Elliott, Jennifer
Courtroom 06
Pott, Victoria

January 25, 2018 9:00 AM Motion
Elliott, Jennifer
Courtroom 06
Pott, Victoria

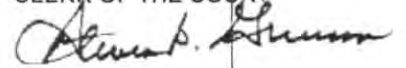
March 29, 2018 9:30 AM Return Hearing
Elliott, Jennifer
Courtroom 06
Pott, Victoria

PRINT DATE:	01/29/2018	Page 2 of 3	Minutes Date:	January 25, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

PRINT DATE:	01/29/2018	Page 3 of 3	Minutes Date:	January 25, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.



1 NOTC

2 AREZOU H. PIROOZI, ESQ.

3 NEVADA BAR# 10187

4 PIROOZI LAW GROUP, PLLC.

5 509 SOUTH SIXTH STREET

6 LAS VEGAS, NV 89101

7 TEL: (702) 260-1010

8 FAX: (702) 364-2010

9 EMAIL: apiroozi@piroozilawgroup.com

10 Attorney for Plaintiff, Ignacio Avila, Jr.

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

IGNACIO AVILA, JR.,

Plaintiff,

vs.

ROSIE ELENA MARTINEZ.,

Defendant.

CASE NO. D-15-515892-C

DEPT. NO. L

NOTICE OF AFFIDAVIT OF ATTEMPTS FOR HENRY OLIVA

AFAS ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS) PIROOZI LAW GROUP, PLLC 509 SOUTH SIXTH STREET LAS VEGAS, NV 89101		PHONE NUMBER 702-260-1010	FOR COURT USE ONLY	
		REFERENCE NUMBER <div style="border: 1px solid black; height: 20px; width: 100px;"></div>		
NAME OF COURT, JUDICIAL DISTRICT OR BRANCH COURT, IF ANY, AND POST OFFICE AND STREET ADDRESS District Court Clark County 200 Lewis Avenue LAS VEGAS, NV 89155				
SHORT NAME OF CASE IGNACIO AVILA JR v. ROSIE ELENA MARTINEZ				
AFFIDAVIT OF ATTEMPTS		DATE/TIME	DEPT/DIV Clark County	CASE NUMBER D-15-515892-C

I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action.

I received the following documents:

MOTION TO JOIN HENRY OLIVA AS A DEFENDANT

After due search, careful inquiry and diligent attempts at the following address(es), I have been unable to effect service of said process on:

Name: HENRY OLIVA

Address(es): 5729 AWAKENING ST.
NORTH LAS VEGAS, NV 89081

Process is being returned without service for the following reason(s):

2017-11-15 16:50:00 Called with status NO ANSWER PER PLAINTIFF PLEASE WAIT 1 HOUR.
 2017-11-19 16:05:00 Attempted (But unable to serve) SUBJECTS CAR IN DRIVEWAY, SPOKE TO SUBJECT THROUGH 2 WAY CAMERA.
 2017-11-26 09:55:00 Attempted (But unable to serve) NO ANSWER, LOTS OF PACKAGES AT DOOR.
 2017-11-27 18:21:00 Unable to serve/return NO ANSWER, NO CAR (LINCOLN) AT RESIDENCE.

Pursuant to NRS 53.045

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

EXECUTED this 27 day of Nov, 2017.



ALLAN SANDOVAL
2636260

AFAS		PHONE NUMBER 702-260-1010		FOR COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		REFERENCE NUMBER		
PIROOZI LAW GROUP, PLLC 509 SOUTH SIXTH STREET LAS VEGAS, NV 89101				
NAME OF COURT, JUDICIAL DISTRICT OR BRANCH COURT, IF ANY, AND POST OFFICE AND STREET ADDRESS District Court Clark County 200 Lewis Avenue LAS VEGAS, NV 89155				
SHORT NAME OF CASE IGNACIO AVILA JR V. ROSIE ELENA MARTINEZ				
AFFIDAVIT OF ATTEMPTS	DATE/TIME	DEPT/DIV Clark County	CASE NUMBER D-15-515892-C	

I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action;

I received the following documents:

MOTION TO JOIN HENRY OLIVA AS A DEFENDANT

After due search, careful inquiry and diligent attempts at the following address(es), I have been unable to effect service of said process on:

Name: HENRY OLIVA

Address(es): 5729 AWAKENING ST.
NORTH LAS VEGAS, NV 89081

Process is being returned without service for the following reason(s):

2017-11-26 09:55:00 Attempted (But unable to serve) NO ANSWER AT THE DOOR; LOTS OF PACKAGES AT DOOR, POSSIBLY OUT OF TOWN?

2017-11-27 18:21:00 Unable to serve/return NO ANSWER AT THE DOOR; NO LINCOLN BUT OTHER VEHICLES ON PROPERTY. STILL MANY PACKAGES AT DOORSTEP

Pursuant to NRS 53.045

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

EXECUTED this 27 day of Nov, 2017.

E Porter

ERICA PORTER
R-098095

AFAS		PHONE NUMBER 702-260-1010		FOR COURT USE ONLY
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS)		REFERENCE NUMBER		
PIROOZI LAW GROUP, PLLC 509 SOUTH SIXTH STREET LAS VEGAS, NV 89101				
NAME OF COURT, JUDICIAL DISTRICT OR BRANCH COURT, IF ANY, AND POST OFFICE AND STREET ADDRESS District Court Clark County Family 200 Lewis Avenue LAS VEGAS, NV 89155				
SHORT NAME OF CASE IGNACIO AVILA, JR. v. ROSIE ELENA MARTINEZ				
AFFIDAVIT OF ATTEMPTS		DATE/TIME 2018-01-25 09:00:00	DEPT/DIV Clark County Family	CASE NUMBER D-15-515892-C

I am and was on the dates herein mentioned over the age of eighteen years and not a party to this action;

I received the following documents:

MOTION TO JOIN HENRY OLIVA AS A DEFENDANT, FOR THE LIMITED PURPOSE OF DETERMINING PATERNITY OF THE MINOR CHILD, ALAN OLIVA

After due search, careful inquiry and diligent attempts at the following address(es), I have been unable to effect service of said process on:

Name: HENRY OLIVA

Address(es): 1221 W. WARM SPRINGS RD.
HENDERSON, NV 89014

Process is being returned without service for the following reason(s):

2018-01-19 12:00:00 Unable to serve/return 10+ ATTEMPTS HAVE BEEN MADE BY TWO DIFFERENT SERVERS TO SERVE HENRY OLIVA, MANAGER AT BIG LOTS. HE IS NEVER THERE, EMPLOYEES SAY THAT HE WILL 'RETURN LATER' OR 'BE IN TOMORROW', WHEN WE GO BACK HE IS NEVER THERE. UNABLE TO SERVE.

Pursuant to NRS 53.045

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

EXECUTED this 19 day of Jan, 2018.



JACK RILEY
R-045599

OFFM

FILED IN OPEN COURT

January 25, 2018

STEVEN D. GRIERSON
CEO / CLERK OF THE COURT

By Victoria Pott

VICTORIA POTT Deputy

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

AVILA, IGNACIO, JR.

Plaintiff

-vs-

MARTINEZ, ROSIE

Defendant

Case No. D-15-515892-C

Department L

ORDER FOR FAMILY MEDIATION CENTER
SERVICES

IT IS HEREBY ORDERED that, in the spirit of preserving the parents' right to make decisions about the future best interest of their child(ren), the above-named parties will make every attempt to resolve their disputes.

IT IS FURTHER ORDERED that, if a Court Interpreter is needed, it is the parties responsibility to pay the interpreter at the time services are rendered, and the language needed is:

IT IS FURTHER ORDERED by the Court that, regarding the child(ren) at issue, the Family Mediation Center (FMC) shall:

Provide Confidential Mediation w/ mom, DAD & Henry Olivia
(When telephone mediation is ordered, one or both parties must reside out-of-state.)

Include a Domestic Violence Protocol

Interview Child(ren)

Issues:

Reunify Parent/Child(ren)

IT IS FURTHER ORDERED that the cost of mediation will be assessed using a sliding scale based on each litigant's individual financial status with a maximum cost of \$300.00 per person. Child(ren) interviews are \$50.00 per child per litigant. Parent/Child(ren) reunifications are \$50.00 per litigant.

IT IS FURTHER ORDERED that the parties, and/or their attorneys must report to the Family Mediation Center at 601 N. Pecos Road, Las Vegas, NV 89101, phone (702) 455-4186.

DATED this 25th day of JANUARY, 2018.

This matter is reset for

Date: 3/29/18 Time: 9:30 AM

Attorney for Plaintiff: AREZOU PIRROOZI

Attorney for Defendant: STEVEN YARMY

JENNIFER L. ELLIOTT

District Judge



CLERK OF THE COURT

1 Soraya M. Veiga, Esq.
2 Nevada State Bar No. 007944
3 7464 W. Sahara Avenue
4 Las Vegas Nevada 89117
5 (702) 686-3371
6 (702) 947-4677 fax
7 email: veigalawoffice@cox.net
8 Unbundled Attorney for Defendant, Rosie Elena Martinez

DISTRICT COURT**FAMILY COURT****CLARK COUNTY, NEVADA**

11	IGNACIO AVILA, JR.,)	CASE NO. D-15-515892-C
12	Plaintiff,)	DEPT. NO. L
13	v.)	
14	ROSIE ELENA MARTINEZ.)	
15	Defendant.)	

NOTICE OF WITHDRAWAL OF ATTORNEY

TO: CLERK OF THE COURT

18 COMES NOW, SORAYA M. VEIGA, ESQ., and submit the following Notice of
19 Withdrawal pursuant to EDCR 5.28 which states in pertinent part as follows:

20 An Attorney who contract with a client to limit the scope of representation shall
21 be permitted to withdraw from representation before the court by filing a
22 Notice of Withdrawal with the clerk's office.

23 This office was retained to provide the following limited services: to review
24 pleadings filed and to attend the hearing scheduled on January 25, 2018 at 9:00 a.m.
25 in Department L. The Agreement was both written and verbal between Defendant,
26 Rosie Elena Martinez and counsel.
27
28

1 This office is withdrawing from the case because our service was completed.
2 Defendant will be representing herself in proper person unless another attorney
3 agrees to represent the client.
4


5 Defendant can be reached at the following address and telephone number
6 5729 Awakening St.

7 North Las Vegas, Nevada 89081

8 (702) 353-9271

9 DATED this 31 day of January, 2018

10 SORAYA M. VEIGA, ESQ.

11
12
13 
14 Soraya M. Veiga, Esq.
15 Nevada State Bar No. 7944
16 7464 W. Sahara Avenue
17 Las Vegas, Nevada 89117
18 Unbundled Attorney for
19 Defendant
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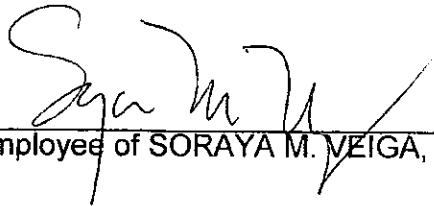
1
2 **CERTIFICATE OF SERVICE**

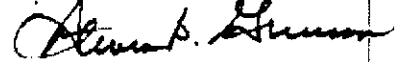
3 I DO HEREBY CERTIFY that on the 31 day of January, 2018, I
4 electronically served a true and correct copy of the above Notice of Withdrawal of
5 Attorney via email to:

6
7 Arezou H. Piroozi, Esq.
8 Apiroozi@piroozilawgroup.com

9 and

10 Rosa Martinez- rose_n_vegas@yahoo.com
11

12
13
14 
15 An Employee of SORAYA M. VEIGA, ESQ.
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NCOA

Name: _____
Address: _____
City/St/Zip: _____
Telephone: _____
Email Address: _____

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Plaintiff. _____

Case No. _____

vs. _____

Dept No. _____

Defendant. _____

NOTICE OF CHANGE OF ADDRESS

PLEASE TAKE NOTICE that (☒ *check one*) ☐ Plaintiff / ☒ Defendant, has new mailing information and that the Court records should be changed to reflect:

Name: _____
Address: _____
City/St/Zip: _____
Telephone: _____
Email Address: _____

DATED this _____ day of _____, 20__

Submitted by: (Signature) ► _____

Printed Name: _____

**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, Arezou Piroozi, 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, Esq. (unbundled).
6. The Court Ordered that Henry Oliva be added as a third party Defendant in this case.

PRINT DATE:	03/29/2018	Page 1 of 5	Minutes Date:	March 29, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

AA000292

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 successors in interest, if the paternity is controverted.

The following statutory presumption applies to Paternity findings:

PRINT DATE:	03/29/2018	Page 2 of 5	Minutes Date:	March 29, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

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).

PRINT DATE:	03/29/2018	Page 3 of 5	Minutes Date:	March 29, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

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 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.

PRINT DATE:	03/29/2018	Page 4 of 5	Minutes Date:	March 29, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

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:

*Canceled: March 29, 2018 9:30 AM Return Hearing
Reason: Canceled as the result of a hearing cancel, Hearing Canceled Reason: Vacated - per
Clerk
Elliott, Jennifer
Courtroom 06
Pott, Victoria*

PRINT DATE:	03/29/2018	Page 5 of 5	Minutes Date:	March 29, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

Alonso J. Lirio
CLERK OF THE COURT

Soraya M. Veiga, Esq.
Nevada State Bar No. 007944
7464 W. Sahara Avenue
Las Vegas Nevada 89117
(702) 686-3371
(702) 947-4677 fax
email: veigalawoffice@cox.net
Unbundled Attorney for Defendant, Rosie Martinez

**DISTRICT COURT
FAMILY COURT
CLARK COUNTY, NEVADA**

IGNACIO AVILA, JR.,) CASE NO. D-15-515892-C DEPT. NO. L)))))
Plaintiff,	
v.	
ROSIE MARTINEZ	
Defendant.	

NOTICE OF WITHDRAWAL OF ATTORNEY

TO: CLERK OF THE COURT

COMES NOW, SORAYA M. VEIGA, ESQ., and submit the following Notice of Withdrawal pursuant to EDCR 5.28 which states in pertinent part as follows:

An Attorney who contract with a client to limit the scope of representation shall be permitted to withdraw from representation before the court by filing a Notice of Withdrawal with the clerk's office.

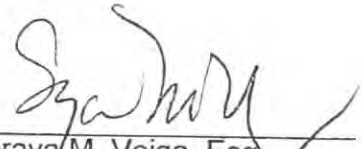
This office was retained to provide the following limited services: Consultation and Attend a hearing on January 25, 2018, in Department L.

This office is withdrawing from the case because our service was completed. Defendant will be representing herself in proper person unless another attorney agrees to represent the client.

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Defendant can be reached at the following address and telephone number
5729 Awakening St.
North Las Vegas, 89081
(702) 353-9271
DATED this 28 day of April, 2018.

SORAYA M. VEIGA, ESQ.



Soraya M. Veiga, Esq.
Nevada State Bar No. 7944
7464 W. Sahara Avenue
Las Vegas, Nevada 89117
Unbundled Attorney for
Defendant

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SORAYA M. VEIGA, ESQ and
that on the 26 day of April, 2018. I emailed a true and correct copy of

NOTICE OF WITHDRAWAL OF ATTORNEY to:

Rosie Martinez- rose_n_vegas@yahoo.com


An Employee of SORAYA M. VEIGA, ESQ.



1 NTC

2 Steven L. Yarmy, Esq.
3 Nevada Bar No. 8733
4 7464 West Sahara Avenue
5 Las Vegas, Nevada 89117
6 (702) 586-3513
7 (702) 586-3690 FAX
8 sly@stevenyarmylaw.com
9 Unbundled Attorney for Third Party Defendant, Henry Oliva

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DISTRICT COURT, FAMILY DIVISION,
CLARK COUNTY, NEVADA

IGNACIO AVILA, JR.,

Plaintiff,

v

ROSIE MARTINEZ.

Defendant.

Case No: D-15-515892-C

Dept. No.: L

NOTICE OF WITHDRAWAL OF ATTORNEY

TO: CLERK OF THE COURT

COMES NOW, STEVEN L. YARMY, ESQ., and submit the following Notice of
Withdrawal pursuant to EDCR 5.28 which states in pertinent part as follows:

An Attorney who contract with a client to limit the scope of representation shall
be permitted to withdraw from representation before the court by filing a Notice of Withdrawal
with the clerk's office.

This office was retained to provide the following limited services: Consultation and
Attend a hearing on January 25, 2018, in Department L.


This office is withdrawing from the case because our service was completed.

NOTICE WITHDRAW AS ATTORNEY.

1
2 Third Party Defendant can be reached at the following address:

3 Henry Oliva
4 5729 Awakening St.
5 North Las Vegas, Nevada 89081
6 (702) 957-8848
7

8 Dated this 9th day of May 2018
9

10 
11 Steven L. Yarny, Esq.
12 Nevada Bar No. 8733
13 7464 West Sahara Avenue
14 Las Vegas, Nevada 89117
15 (702) 586-3513
16 (702) 586-3690 FAX
17 sly@stevenyarnylaw.com
18 Unbundled Attorney for Third Party Defendant.
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NOTICE WITHDRAW AS ATTORNEY.

AA000301

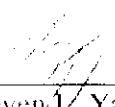
1
2 **CERTIFICATE OF SERVICE**

3 I STEVEN L. YARMY, ESQ, the undersigned, HEARBY CERTIFY that service of the
4 foregoing NOTICE OF WITHDRAWAL OF ATTORNEY was made on May 9, 2018 by
5 personally depositing a copy of the same in the United States mail in Las Vegas, Nevada,
6 postage prepaid, and addressed as follows:
7

8 Henry Oliva
9 5729 Awakening St.
10 North Las Vegas, Nevada 89081

11 Soraya M. Veiga, Esq.
12 7464 West Sahara Avenue
13 Las Vegas, NV 89117

14 Arezou Piroozi, Esq.
15 521 South Sixth Street
16 Las Vegas NV 89101

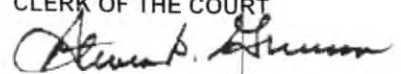
17 
18 Steven L. Yarmy, Esq.
19 Nevada Bar No. 8733
20 7454 West Sahara Avenue
21 Las Vegas, Nevada 89117
22 Unbundled Attorney for Third Party Defendant
23
24
25
26
27
28

NOTICE WITHDRAW AS ATTORNEY.

AA000302

1 **ORDR**
2 **AREZOU H. PIROOZI, ESQ.,**
3 **NEVADA BAR# 10187**
4 **PIROOZI LAW GROUP, PLLC.**
5 **509 SOUTH SIXTH STREET**
6 **LAS VEGAS, NV 89101**
7 **TEL: (702) 260-1010**
8 **FAX: (702) 364-2010**
9 **EMAIL: apiroozi@piroozilawgroup.com**
10 **Attorney for Plaintiff, Ignacio Avila, Jr.**

Electronically Filed
6/15/2018 1:40 PM
Steven D. Grierson
CLERK OF THE COURT



6 **DISTRICT COURT**
7 **FAMILY DIVISION**
8 **CLARK COUNTY, NEVADA**

9 **IGNACIO AVILA, JR.,**

10 Plaintiff,

11 vs.

12 **ROSIE ELENA MARTINEZ,**

13 Defendant.

CASE NO. D-15-515892-C

DEPT. NO. 1

DATE: March 29, 2018

TIME: 7:30 a.m.

14 **ORDER**

15 This matter is pursuant to the Court's Minute Order on the above referenced date and
16 time. The Court in review of its March 29, 2018 calendar notes the following:

17 1. This case was initiated by Plaintiff's Complaint for Custody of **JAZLYNN ROSE**
18 **MARTINEZ**, born October 25, 2013.

19 2. Plaintiff admitted that through his own "self-help" DNA test, he found out on
20 January 20, 2017, that Defendant's child **ALAN OLIVA**, born October 18, 2011 was also his
21 biological son.

22 3. Thereafter, the First Amended Decree of Custody, drafted by Plaintiff's counsel, was
23 filed March 1, 2017 wherein only the minor child **JAZLYNN** was included as a child born to
24 Plaintiff and Defendant.

25 4. Plaintiff filed an Amended Complaint for Custody November 1, 2017 which
26 included the minor child **ALAN OLIVA**, born October 18, 2011.

27
28 ☐ Other
☐ Dismissed - Want of Prosecution
☒ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Judgment Reached by Trial
☐ Settled/Withdrawn
☒ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By ADR
☐ Judgment Reached by Trial

AA000303

1 5. At the January 25, 2018 hearing, Plaintiff was represented by Arezou Piroozi, Esq.,
2 Defendant was represented by Soraya Veiga, Esq. (unbundled) and Henry Oliva was
3 represented by Steven Yarmy, Esq. (unbundled).

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

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

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

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

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

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

25 12. The parties were Ordered not to discuss any part of this litigation with or in the
26 presence of the children pursuant to EDCR 5.301.
27
28

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

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

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

7 16. Ms. Piroozj failed to file the Order from the January 25, 2018 hearing and thus the
8 Court files this Order. The Court FINDS that pursuant to NRS 440.610, the facts listed in the
9 child's birth certificate become prima facie evidence of the facts stated therein. Thus, a person
10 listed as the father on the birth certificate is presumed to be the father of the child if paternity
11 becomes disputed. NRS 440.610 Certificate as prima facie evidence. Each certificate, as
12 provided for in this chapter, filed within six (6) months after the time prescribed for their filing,
13 shall be prima facie evidence of the facts therein stated. Data pertaining to the father of a child
14 is such evidence if the alleged father is, or becomes, the husband of the mother in a legal
15 marriage; if not, the data pertaining to the father of a child is not such evidence in any civil or
16 criminal proceeding adverse to the interests of the alleged father, or of his heirs, devisees or
17 other successors in interest, if the paternity is controverted.

18
19 The following statutory presumption applies to Paternity findings: NRS 126.051
20 Presumptions of Paternity

21 1. A man is presumed to be the natural father of a child if: (d) While the child is under
22 the age of majority, he receives the child into his home and openly holds out the child as his
23 natural child. "Under the statutory scheme for determining paternity, the district court is not
24 compelled to determine, on the basis of deoxyribonucleic acid (DNA) test, that a man is or is
25 not a child's father as a matter of law, NRS 126.051, 126.121, Love v. Love, 1998, 959 P.2d
26 523, 114 Nev. 572. The statutory scheme for determining paternity clearly reflects the
27 legislature's intent to allow non-biological factors to become critical. Love v. Love, 1998, 959
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2 determine biological paternity with certainty, biology is not the predominant consideration in
3 determining parental responsibility once a child has reached his or her third year of life, (In re
4 Marriage of B., supra, 124 Cal.App.3d at p. 531, 177 Cal. Rptr. 429.) In re Marriage of
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9 presumed father. (Susan H. v. Jack S., supra, 30 Cal.App.4th at pp. 1442-1443, 37 Cal.Rptr.2d
10 120.), In re Marriage of Freeman, 45 Cal. App. 4th 1437, 1450, 53 Cal. Rptr. 2d 439, 448
11 (1996). Biology will only control a determination of paternal responsibility for a limited period
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17 App. 4th 1437, 1444, 53 Cal. Rptr. 2d 439, 444-45 (1996). After two (2) years absent clear and
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19 "In the case of an older child the familial relationship between the child and the man purporting
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21 paternity. A man who has lived with a child, treating it as his son or daughter, has developed a
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24 important, to the child at least, than a biological relationship of actual paternity. In re Marriage
25 of Freeman, 45 Cal. App. 4th 1437, 1445, 53 Cal. Rptr. 2d 439, 445 (1996). Plaintiff is also
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27
28

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

1 parent and child—as a family. The child in this case is six and a half (6.5) years old; the time to
2 contest paternity has long past.

3 The Court having reviewed all of the papers and pleadings on file herein; the Court
4 having been fully advised in the premises and good cause appearing, **FINDS:**

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

7 **NOW, THEREFORE,**

8 **IT IS ORDERED,** that other than joining Henry Oliva as a necessary party, Plaintiff's
9 MOTION SHALL BE DENIED and the case shall be closed.

10 **IT IS FURTHER ORDERED,** that parties SHALL NOT DISCUSS this case with the
11 minor children. Children can suffer hurt and loss when a parent determines later in their
12 minority to contest paternity. The parties are hereby put on notice that they are not to discuss
13 this or any other Family Court litigation with the minor child pursuant to EDCR 5.301 below:

14 EDCR 5.301 Confidentiality, best interests of children. Absent a written order of the
15 court to the contrary, all lawyers, litigants, witnesses or other parties privy to matters
16 being heard by the family division are prohibited from: (a) Discussing the issues,
17 proceedings, pleadings, or papers on file with the court with the minor children of the
18 litigants; (b) Allowing any minor child to review the record of the proceedings before
19 the court, whether in the form of transcripts, audio cassettes or audio-visual tapes; or (c)
20 Leaving such materials in a place where it is likely or foreseeable that a child will
21 access those materials.

22 **IT IS FURTHER ORDERED,** that the Clerk shall remove the matter from the Court's
23 calendar set March 29, 2018 at 9:30 a.m. pursuant to EDCR 2.23. Department L JEA shall
24 advise parties and counsel there shall be no appearances and this case has been closed. Should
25 a final Order be desired, Ms. Piroozi may draft an Order from this Minute Order and both Ms.
26 Martinez and Mr. Oliva shall review and sign off or waive signature.
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28

1 IT IS FURTHER ORDERED, the Parties are put on notice of the requirements of NRS
2 125C.0045(6), as follows:

3 (a) PENALTY FOR VIOLATION OF ORDER: THE
4 ABDUCTION, CONCEALMENT OR DETENTION OF A
5 CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS
6 A CATEGORY D FELONY AS PROVIDED IN NRS 193.130.
7 NRS 200.359 provides that every person having a limited right of
8 custody to a child or any parent having no right of custody to the
9 child who willfully detains, conceals or removes the child from a
10 parent, guardian or other person having lawful custody or a right of
11 visitation of the child in violation of an order of this court, or
12 removes the child from the jurisdiction of the court without the
13 consent of either the court or all persons who have the right to
14 custody or visitation is subject to being punished for a category D
15 felony as provided in NRS 193.130.

16 IT IS FURTHER ORDERED, the Parties are put on notice that the terms of The
17 Hague Convention of October 25, 1980, adopted by the 14th Session of The Hague Conference
18 on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign
19 country.

20 IT IS FURTHER ORDERED, the Parties are put on notice that pursuant to NRS
21 125C.0045(7)-(8):

22 If a parent of a child lives in a foreign country or has significant commitments in a
23 foreign country:

- 24 i. The parties are also to acknowledge that the State of Nevada will be the habitual
25 residence of the minor child within the United States for the purposes of applying
26 the terms of The Hague Convention as set forth in NRS 125C.0045(7).
- 27 ii. Upon motion of one of the parties, the court may order the parent to post a bond
28 if the court determines that the parent poses an imminent risk of wrongfully
removing or concealing the child outside the country of habitual residence. The
bond must be in an amount determined by the court and may be used only to pay
for the cost of locating the child and returning him/her to his/her habitual
residence if the child is wrongfully removed from or concealed outside the
country of habitual residence. The fact that a parent has significant commitments
in a foreign country does not create a presumption that the parent poses an
imminent risk of wrongfully removing or concealing the child.

29 IT IS FURTHER ORDERED, the Parties are put on notice that pursuant to the
30 provisions of NRS 125C.006:

- 1 1. If primary physical custody has been established pursuant to an order, judgment, or
2 decree of a court and the custodial parent intends to relocate his or her residence to a
3 place outside of this State or to a place within this State that is at such a distance that
4 would substantially impair the ability of the other parent to maintain a meaningful
5 relationship with the child, and the custodial parent desires to take the child with him
6 or her, the custodial parent shall, before relocating:
(a) Attempt to obtain the written consent of the noncustodial parent to relocate with
the child; and
(b) If the noncustodial parent refuses to give that consent, petition the court for
permission to relocate with the child.
- 7 2. The court may award reasonable attorney's fees and costs to the custodial parent if
8 the court finds that the noncustodial parent refused to consent to the custodial
9 parent's relocation with the child:
(a) Without having reasonable grounds for such refusal; or
(b) For the purpose of harassing the custodial parent.
- 10 3. A parent who relocates with a child pursuant to this section without the written
11 consent of the noncustodial parent, or the permission of the court is subject to the
provisions of NRS 200.359.


12 **IT IS FURTHER ORDERED**, that in accordance with NRS 31A.025 and NRS
13 125.007, a parent responsible for paying child support is subject to NRS 31A.025 to 31A.330,
14 inclusive, and Sections 2 and 3 of Chapter 31A of the Nevada Revised Statutes, regarding the
15 withholding of wages and commissions for the delinquent payment of support. These statutes
16 and provisions require that, if a parent responsible for paying child support is delinquent in
17 paying the support of a child that such person has been ordered to pay, then that person's wages
18 or commissions shall immediately be subject to wage assignment, pursuant to the provision of
19 the above-cited statutes.

20
21 **IT IS FURTHER ORDERED**, the following statutory notices relating to the support of
22 minor children are applicable to the parties herein:

- 23 A. Pursuant to NRS 125B.095, if an installment of an obligation to pay support for a
24 child becomes delinquent in the amount owed for one (1) month's support, a 10%
per annum penalty must be added to the delinquent amount.
- 25 B. Pursuant to NRS 125B.140, if an installment of an obligation to pay support for a
26 child becomes delinquent, the court will determine interest upon the arrearages at a
27 rate established pursuant to NRS 99.040, from the time each amount becomes due.
Interest will continue to accrue on the amount ordered until it is paid, and additional
28 attorney's fees must be allowed if required for collection.

1 C. Pursuant to NRS 125B.145, the parties, and each of them, are hereby, placed on
2 notice the order for support may be reviewed at any time on the basis of changed
3 circumstances. For the purposes of this subsection, a change of 20 percent or more in
4 the monthly income of a person who is subject to an order for the support of a child
5 shall be deemed to constitute changed circumstances and require a review of
6 modification of the order for the support of a child. Moreover, also pursuant to NRS
7 125B.145, the parties are on notice that the order for support will be reviewed by the
8 court at least every three (3) years to determine whether the order should be
9 modified. The review will be conducted upon the filing of a request by a parent or
10 legal guardian of the child; or the Nevada State Welfare Division of the District
11 Attorney's Office, if the Division of the District Attorney has jurisdiction of the case.

12 DATED this 12TH day of JUNE, 2018.

13 
14 JUDGE JENNIFER ELLIOTT
15 JENNIFER ELLIOTT

16 DATED this 12th day of June, 2018.

17 DATED this ___ day of ___, 2018.

18 Respectfully Submitted By:

19 Approved as to Form and Content:

20 **PIROOZI LAW GROUP, PLLC.**

21 
22 **AREZOU H. PIROOZI, ESQ.**

23 NEVADA BAR# 10187
24 509 SOUTH SIXTH STREET
25 LAS VEGAS, NV 89101

26 TEL: (702) 260-1010

27 FAX: (702) 364-2010

28 EMAIL: apiroozi@piroozilawgroup.com

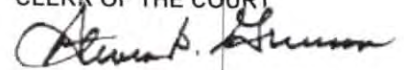
Attorney for Plaintiff, Ignacio Avila, Jr.

DATED this ___ day of ___, 2018.

Approved as to Form and Content:


HENRY OLIVA


ROSIE ELENA MARTINEZ



NEOJ
AREZOU H. PIROOZI, ESQ.
NEVADA BAR# 10187
PIROOZI LAW GROUP, PLLC.
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EMAIL: apiroozi@piroozilawgroup.com
Attorney for Plaintiff, Ignacio Avila, Jr.

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

IGNACIO AVILA, JR.,
Plaintiff,

vs.

CASE NO. D-15-515892-C

ROSIE ELENA MARTINEZ,

DEPT. NO. L

Defendant.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 15th day of June, 2018, an Order was entered in the above entitled matter, a copy of which is attached hereto.

DATED this 20th day of June, 2018.

Respectfully Submitted by:



AREZOU H. PIROOZI, ESQ.
NEVADA BAR# 10187
PIROOZI LAW GROUP, PLLC.
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TEL: (702) 260-1010
FAX: (702) 364-2010
EMAIL: apiroozi@piroozilawgroup.com
Attorney for Plaintiff, Ignacio Avila, Jr.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of **PIROOZI LAW GROUP, PLLC** ("the Firm"). I am over the age of eighteen (18) and not a party to the within action. I am readily familiar with the Firm's practice of collection and processing correspondence for mailing. Under the Firm's practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing document as described as "**NOTICE OF ENTRY OF ORDER**" on this 20th day of June, 2018, to all interested parties as follows:

☒ **BY MAIL:** Pursuant to NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows:

☐ **BY ELECTRONIC FILING:** via Court's electronic filing and service systems ("Wiznet") to all parties on the current service list.

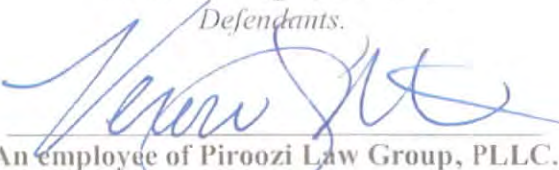
☐ **BY FACSIMILE:** Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below:

☒ **BY ELECTRONIC MAIL:** Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via electronic mail to the electronic mail address shown below:

☐ **BY CERTIFIED MAIL:** I placed a true copy thereof enclosed in a sealed envelope, return receipt requested, addressed as follows:

☐ **BY HAND DELIVERY**

Ignacio Avila, Jr.
1214 Emerald Stone AVE
North Las Vegas, NV 89081
Plaintiff.

Rosie Martinez & Henry Oliva
5729 Awakening ST
North Las Vegas, NV 89081
Defendants.

An employee of Piroozi Law Group, PLLC.

Steven D. Grierson

ORDER

AREZQUIZ, PIROOZA, LLC,
NEVADA BAR# 10187
PIROOZA LAW GROUP, PLLC,
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TEL: (702) 260-1010
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EMAIL: apirooza@piroozilawgroup.com
Attorney for Plaintiff, Ignacio Avila, Jr.

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

IGNACIO AVILA, JR.,

Plaintiff,

vs.

ROSIE ELENA MARTINEZ,

Defendant.

CASE NO. D-15-515892-C

DATE: May 1,

DATE: March 29, 2018

TIME: 7:30 am.

ORDER

This matter is pursuant to the Court's Minute Order on the above referenced date and time. 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 *AREZQUIZ, ROSIE MARTINEZ*, born October 25, 2013.

2. Plaintiff admitted that through his own "self-help" DNA test, he found out on January 20, 2017, that Defendant's child *AREZQUIZ, ROSIE*, born October 18, 2011 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 *AREZQUIZ, ROSIE* 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 *AREZQUIZ, ROSIE*, born October 18, 2011.

FILED
CLERK OF DISTRICT COURT
CLARK COUNTY, NEVADA
JUN 15 2018
BY: [Signature]
Case Number: D-15-515892-C

1 5. At the January 25, 2018 hearing, Plaintiff was represented by Arzon Pirooz, Esq.,
2 Defendant was represented by Soraya Veiga, Esq. (unbundled) and Henry Oliva was
3 represented by Steven Yarmy, Esq. (unbundled).

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

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

7 8. The Court Found and Ordered that the child, A.A.A.R. was over six (6) years of age,
8 that Henry Oliva was the named father on the birth certificate, that the child had been living
9 with Defendant Rosie Martinez and Henry Oliva since his birth, that Plaintiff's "self-help"
10 positive DNA test was provided to Plaintiff PRIOR to his attorney having drafted the First
11 Amended Decree of Custody filed March 1, 2017 wherein only the minor child A.A.A.R.
12 was included as a child born to Plaintiff and Defendant and that absent clear and convincing
13 evidence of fraud on Defendant's part, or absent a stipulation between the parties, his request
14 for Court-Ordered paternity tests of himself and Henry Oliva were denied.
15

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

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

23 11. The Court sent all three (3) parties to mediation and Ordered that if there was an
24 impasse, Plaintiff's counsel shall file a legal brief if Plaintiff felt he had clear and convincing
25 evidence of fraud that could be imputed to Defendant pursuant to paternity law.
26

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

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

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

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

7 16. Ms. Piroozi failed to file the Order from the January 25, 2018 hearing and thus the
8 Court files this Order. The Court FINDS that pursuant to NRS 40.610, the facts listed in the
9 child's birth certificate become prima facie evidence of the facts stated therein. Thus, a person
10 listed as the father on the birth certificate is presumed to be the father of the child if paternity
11 becomes disputed. NRS 40.610 Certificate as prima facie evidence. Each certificate, as
12 provided for in this chapter, filed within six (6) months after the time prescribed for their filing,
13 shall be prima facie evidence of the facts therein stated. Data pertaining to the father of a child
14 is such evidence if the alleged father is, or becomes, the husband of the mother in a legal
15 marriage; if not, the data pertaining to the father of a child is not such evidence in any civil or
16 criminal proceeding adverse to the interests of the alleged father, or of his heirs, devisees or
17 other successors in interest, if the paternity is controverted.

18 The following statutory presumption applies to Paternity findings: NRS 126.051
19 Presumptions of Paternity

20 1. A man is presumed to be the natural father of a child if: (d) While the child is under
21 the age of majority, he receives the child into his home and openly holds out the child as his
22 natural child. "Under the statutory scheme for determining paternity, the district court is not
23 compelled to determine, on the basis of deoxyribonucleic acid (DNA) test, that a man is or is
24 not a child's father as a matter of law. NRS 126.011, 126.121, Love v. Love, 1998, 939 P.2d
25 523, 11-1 Nev. 572. The statutory scheme for determining paternity clearly reflects the
26 legislature's intent to allow non-biological factors to become critical. Love v. Love, 1998, 939
27
28

1 P.2d 523, 114 Nev. 572. "The Legislature has made it clear that although it is now possible to
2 determine biological paternity with certainty, biology is not the predominant consideration in
3 determining parental responsibility once a child has reached his or her third year of life. (In re
4 Marriage of B., supra, 124 Cal.App.3d at p. 531, 177 Cal. Rptr. 429.) In re Marriage of
5 Freeman, 45 Cal. App. 4th 1437, 1449, 53 Cal. Rptr. 2d 439, 447 (1996). "The state has an
6 interest in preserving and protecting the developed parent-child and sibling relationships which
7 give young children social and emotional strength and stability. [Citation omitted.] This
8 interest is served notwithstanding termination of the mother's marital relationship with the
9 presumed father. (Susan H. v. Jack S., supra, 30 Cal.App.4th at pp. 1442, 1443, 37 Cal.Rptr.2d
10 120.). In re Marriage of Freeman, 45 Cal. App. 4th 1437, 1450, 53 Cal. Rptr. 2d 439, 448
11 (1996). Biology will only control a determination of paternal responsibility for a limited period
12 early in a child's life and thereafter the predominant consideration must be the nature of the
13 presumed father's social relationship with the child. In re Marriage of Freeman, 45 Cal. App.
14 4th 1437, 1446, 53 Cal. Rptr. 2d 439, 446 (1996). Under California Statutory Law, in 1980 the
15 Legislature added what is now section 7541 providing for rebuttal of the presumption by blood
16 testing requested within two years following a child's birth. In re Marriage of Freeman, 45 Cal.
17 App. 4th 1437, 1444, 53 Cal. Rptr. 2d 439, 444-45 (1996). After two (?) years absent clear and
18 convincing evidence of fraud or mistake of fact, a request for a paternity test may be denied.
19 "In the case of an older child the familial relationship between the child and the man purporting
20 to be the child's father is considerably more palpable than the biological relationship of actual
21 paternity. A man who has lived with a child, treating it as his son or daughter, has developed a
22 relationship with the child that should not be lightly dissolved and upon which liability for
23 continued responsibility to the child might be predicated. This social relationship is much more
24 important, to the child at least, than a biological relationship of actual paternity. In re Marriage
25 of Freeman, 45 Cal. App. 4th 1437, 1445, 53 Cal. Rptr. 2d 439, 445 (1996). Plaintiff is also
26 barred by claim preclusion which is a defense that prevents the re-litigation of a previously
27
28

resolved claim. *Elizondo v. Hood Mach., Inc.*, 129 Nev., Adv. Op. 34, 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. *Holly v. Reg'l. Ent. Servs. Corp.*, 177 Nev., Adv. Op. 80,
66 P.3d 607, 608 (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.*
Bagsham, 111 Nev. 10, 11, 839 P.2d 823, 825 (1993). 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. 23, 350 P.3d 30, 35 (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 having reviewed all of the papers and pleadings on file herein; the Court having been fully advised in the premises and good cause appearing, *WITTED*:

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.

NOTED, RECORDED, &

IT IS ORDERED, that other than joining Henry Oliva as a necessary party, Plaintiff's MOTION SHALL BE DENIED and the case shall be closed.

IT IS ORDERED, 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.

IT IS ORDERED, that the Clerk shall remove the matter from the Court's calendar set March 29, 2013 at 9:30 a.m. pursuant to EDCR 2.23. Department C JLA shall advise parties and counsel there shall be no appearances and this case has been closed. Should a final Order be desired, Ms. Proozi may draft an Order from this Minute Order and both Ms. Martinez and Mr. Oliva shall review and sign off or waive signature.

1 If it is determined that the Parties are put on notice of the requirements of NRS
2 125C.0045(6), as follows:

3 (G) PENALTY FOR VIOLATION OF ORDER: THE
4 ABDUCTION, CONCEALMENT OR DETENTION OF A
5 CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS
6 A CATEGORY D FELONY AS PROVIDED IN NRS 193.130.
7 NRS 200.159 provides that every person having a limited right of
8 custody to a child or any parent having no right of custody to the
9 child who willfully detains, conceals or removes the child from a
10 parent, guardian or other person having lawful custody or a right of
11 visitation of the child in violation of an order of this court, or
12 removes the child from the jurisdiction of the court without the
13 consent of either the court or all persons who have the right to
14 custody or visitation is subject to being punished for a category D
15 felony as provided in NRS 193.130.

16 If it is determined that the Parties are put on notice that the terms of The
17 Hague Convention of October 25, 1980, adopted by the 14th Session of The Hague Conference
18 on Private International Law, apply if a parent abducts or wrongfully retains a child in a foreign
19 country,

20 If it is determined that the Parties are put on notice that pursuant to NRS
21 125C.0045(7)-(8):

22 If a parent of a child lives in a foreign country or has significant commitments in a
23 foreign country:

- 24 i. The parties are also to acknowledge that the State of Nevada will be the habitual
25 residence of the minor child within the United States for the purposes of applying
26 the terms of The Hague Convention as set forth in NRS 125C.0045(7).
- 27 ii. Upon motion of one of the parties, the court may order the parent to post a bond
28 if the court determines that the parent poses an imminent risk of wrongfully
removing or concealing the child outside the country of habitual residence. The
bond must be in an amount determined by the court and may be used only to pay
for the cost of locating the child and returning him/her to his/her habitual
residence if the child is wrongfully removed from or concealed outside the
country of habitual residence. The fact that a parent has significant commitments
in a foreign country does not create a presumption that the parent poses an
imminent risk of wrongfully removing or concealing the child.

29 If it is determined that the Parties are put on notice that pursuant to the
30 provisions of NRS 125C.004:

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

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

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

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

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

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

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

13 4. It is the intent of the Legislature that, in accordance with NRS 31A.025 and NRS
14 125.007, a parent responsible for paying child support is subject to NRS 31A.025 to 31A.330,
15 inclusive, and Sections 2 and 3 of Chapter 31A of the Nevada Revised Statutes, regarding the
16 withholding of wages and commissions for the delinquent payment of support. These statutes
17 and provisions require that, if a parent responsible for paying child support is delinquent in
18 paying the support of a child that such person has been ordered to pay, then that person's wages
19 or commissions shall immediately be subject to wage assignment, pursuant to the provision of
20 the above-cited statutes.

21 5. It is the intent of the Legislature that the following statutory notices relating to the support of
22 minor children are applicable to the parties herein:

23 A. Pursuant to NRS 125B.093, if an installment of an obligation to pay support for a
24 child becomes delinquent in the amount owed for one (1) month's support, a 10%
per annum penalty must be added to the delinquent amount.

25 B. Pursuant to NRS 125B.110, if an installment of an obligation to pay support for a
26 child becomes delinquent, the court will determine interest upon the arrearages at a
27 rate established pursuant to NRS 99.040, from the time each amount becomes due.
Interest will continue to accrue on the amount ordered until it is paid, and additional
attorney's fees must be allowed if required for collection.

C. Pursuant to NRS 125B.145, the parties, and each of them, are hereby, placed on notice the order for support may be reviewed at any time on the basis of changed circumstances. For the purposes of this subsection, a change of 20 percent or more in the monthly income of a person who is subject to an order for the support of a child shall be deemed to constitute changed circumstances and require a review of modification of the order for the support of a child. Moreover, also pursuant to NRS 125B.145, the parties are on notice that the order for support will be reviewed by the court at least every three (3) years to determine whether the order should be modified. The review will be conducted upon the filing of a request by a parent or legal guardian of the child; or the Nevada State Welfare Division of the District Attorney's Office, if the Division of the District Attorney has jurisdiction of the case.

DATED this 12TH day of JUNE, 2018.


JUDGE JENNIFER ELLIOTT
JENNIFER ELLIOTT


DATED this 12TH day of June, 2018.

DATED this ____ day of _____, 2018.

Respectfully Submitted By:

Approved as to Form and Content:

PIROOZI LAW GROUP, PLLC.

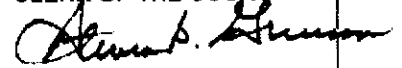

AREZOU H. PIROOZI, ESQ.
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FAX: (702) 364-2010
EMAIL: apiroozi@piroozilawgroup.com
Attorney for Plaintiff, Ignacio Avila, Jr.


ROSIE ELENA MARTINEZ

DATED this ____ day of _____, 2018.

Approved as to Form and Content:


HENRY OLIVA



MOT

AREZOU H. PIROOZI, ESQ.

NEVADA BAR# 10187

PIROOZI LAW GROUP, PLLC.

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EMAIL: apiroozi@piroozilawgroup.com

Attorney for Plaintiff, Ignacio Avila, Jr.

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

IGNACIO AVILA, JR.

Plaintiff,

vs.

ROSIE ELENA MARTINEZ,
HENRY OLIVA,

Defendants.

CASE NO: D-15-515892-C

DEPT. NO: L

Date of Hearing: **9/11/2018**

Time of Hearing: **10:00 am**

Oral Argument Requested

☒ YES ☐ NO

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

MOTION TO RECONSIDER THE ORDER ENTERED JUNE 20, 2018

1 **COMES NOW**, Plaintiff, IGNACIO AVILA, JR. ("Ignacio"), by and through his
2 attorney of record, AREZOU H. PIROOZI, ESQ., of PIROOZI LAW GROUP, PLLC.,
3 and hereby files this Motion to Reconsider the Order Entered June 20, 2018.
4

5 The Plaintiff prays for the following relief:

6 1. For an Order that the Court grant leave to amend the Plaintiff's Complaint
7 for Custody to reflect the existence and paternity of an additional child who is the issue
8 of the parties, to wit; Alan Oliva, born October 18, 2011.
9

10 2. For an Order setting aside the Custody Decree;
11

12 3. For an Order that the parties share joint legal and joint physical custody of
13 the minor children, modifying the current custody Order for the minor child Jazlynn
14 Rose Martinez Avila;
15

16 4. For an Order that the parties pay child support pursuant to NRS 125C.070,
17 and Wright v. Osburn, 114 Nev. 1367, 70 P.2d 1071 (1998);
18

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

1 5. For an Order that the Defendant reimburse the Plaintiff for the attorney's
2 fees she had to expend for having to file this Opposition with the Court, pursuant to
3 NRS 18.010; NRS 22.100, and EDCR 5.11; and
4

5 6. For such other relief as this Court deems just and proper in the premises.

6 **DATED** this 6 day of July, 2018.

Respectfully Submitted by:

9 *Arezou H. Piroozi*

10 **AREZOU H. PIROOZI, ESQ.**

11 NEVADA BAR# 10187

12 **PIROOZI LAW GROUP, PLLC.**

13 509 SOUTH SIXTH STREET

14 LAS VEGAS, NV 89101

15 TEL: (702) 260-1010

16 FAX: (702) 364-2010

17 EMAIL: apiroozi@piroozilawgroup.com

18 *Attorney for Plaintiff, Ignacio Avila, Jr.*

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NOTICE OF MOTION

TO: ROSIE ELENA MARTINEZ, Defendant;
TO: HENRY OLIVA, Defendant

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing before the above-entitled court on the 11th day of September, 2018, at the hour of 10:00 o'clock a.m. of said day, in Department L of said Court.

DATED this 6th day of July, 2018. Respectfully Submitted by:



AREZOU H. PIROOZI, ESQ.

NEVADA BAR# 10187

PIROOZI LAW GROUP, PLLC.

509 SOUTH SIXTH STREET

LAS VEGAS, NV 89101

TEL: (702) 260-1010

FAX: (702) 364-2010

EMAIL: apiroozi@piroozilawgroup.com

Attorney for Plaintiff, IGNACIO AVILA, JR.

POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS/RELEVANT PROCEDURAL HISTORY

On November 1, 2017, Ignacio filed a 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, and a Motion to Join Henry Oliva as a Defendant, for the Limited Purpose of

1 Determining Paternity of the Minor Child, Alan Oliva. The Court heard the motions on
2 January 25, 2018. After mediation was not successful, the Court filed a minute order on
3 March 29, 2018, and then filed and entered Order on June 20, 2018, incorporating
4 March 29, 2018, minute order, denying all of Ignacio's requested relief, except to join
5 Henry Oliva as a party to the action.
6

7 Ignacio believes that the Court erred in its decision, and he asks through
8 undersigned counsel that the Court to reconsider its order.
9

10 II.

11 LEGAL ARGUMENT

12 The Court may reconsider its order, pursuant to **EDCR 2.24**, which states:

13
14 “(a) No motions once heard and disposed of may be renewed in the same cause, nor
15 may the same matters therein embraced be reheard, unless by leave of the court granted
16 upon motion therefor, after notice of such motion to the adverse parties.

17 (b) A party seeking reconsideration of a ruling of the court, other than any order which
18 may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60, must file a
19 motion for such relief within 10 days after service of written notice of the order or
20 judgment unless the time is shortened or enlarged by order. A motion for rehearing or
21 reconsideration must be served, noticed, filed and heard as is any other motion. A
22 motion for reconsideration does not toll the 30-day period for filing a notice of appeal
from a final order or judgment.

23 (c) If a motion for rehearing is granted, the court may make a final disposition of the
24 cause without reargument or may reset it for reargument or resubmission or may make
25 such other orders as are deemed appropriate under the circumstances of the particular
26 case.”
27
28

1 The Court's Order was filed on June 15, 2018, and a Notice of Entry of that Order
2 was entered on June 20, 2018. Thus, Ignacio has timely filed the instant motion, within
3 10 days of the Notice of Entry of the Order.
4

5 **A. THE COURT ERRED IN NOT GRANTING IGNACIO AN**
6 **EVIDENTIARY HEARING FOR THE COURT TO HEAR EVIDENCE TO**
7 **DETERMINE IF A FRAUD HAD BEEN PERPETRATING UPON BOTH**
8 **IGNACIO AND THE COURT.**

9 Ignacio claimed, in his motion that the only reason he did not pursue paternity of
10 Alan was because he was informed that Alan was not his child. He was first informed of
11 this by Rosie, and later was shown by Henry Oliva a false or altered paternity test
12 showing that Henry was the father of Alan. Ignacio also argued that he did a paternity
13 test, which confirmed that he was Alan's natural father.
14

15 Ignacio argued that the Court should set aside the custody order based on NRCP
16 60(b)(3), citing the appropriate case law, and the fact that the six-month time limit for
17 filing such a motion does not apply in cases of fraud. The Court admonished Ignacio to
18 demonstrate his claims by clear and convincing evidence, and to inform the Court why
19 Rosie's alleged innocent repetition of the fraudulent fact is material to his claim.
20
21

22 To demonstrate fraud, Ignacio must demonstrate that the opposing party made a
23 false representation, with knowledge or belief that the representation was false or
24 without a sufficient basis for making the representation, that the opposing party intended
25 to induce him to act or refrain from acting on the representation, that he justifiably
26 relied on the representation, and that he was damaged as a result of his reliance. *J.A.*
27
28

1 *Jones Const. Co. v. Lehrer McGovern Bovis, Inc.*, 120 Nev. 277, 290–91, 89 P.3d 1009,
2 1018 (2004).

3 In his motion, and in the offers of proof made at the hearings on this case, Ignacio
4 alleged that Rosie made a false representation that he was not Alan's father, and that
5 Henry made a false representation, in the form of a falsified DNA test, that Ignacio was
6 not Alan's father. Ignacio contended that the false representation was intended to induce
7 him not to seek paternity to be declared in his favor in regard to Alan. Ignacio justifiably
8 relied on Rosie's representation, because she had relations with both Ignacio and Henry,
9 and was in a position to know who the natural father was. Ignacio justifiably relied on
10 Henry's representation, because a DNA test, on its face, appears to be convincing
11 evidence. Ignacio was damaged, because he has been denied a relationship as a parent
12 with his biological child. Thus, both Ignacio's motion, and the evidence adduced at the
13 hearing in this case, show that Ignacio pled, with specificity, a prima facie case of fraud.
14

15 Because he pled a prima facie case, Ignacio should have been granted an
16 evidentiary hearing by the Court. *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123, at 124
17 (1993). Ignacio does not have to prove his case by clear and convincing evidence at the
18 hearing; that is for trial. As long as he met his initial burden pursuant to *Rooney*, Ignacio
19 should have been granted an evidentiary hearing so that he could present his case to this
20 Court, with the burden of proving, by clear and convincing evidence, the fraud the
21 damages therefrom. Thus, the Court erred in not granting Ignacio an evidentiary
22 hearing.

1 Moreover, the Court stated that it made no findings as to the alleged text sent by
2 Henry to Ignacio showing alleged DNA results. *See* Court's Order Entered June 20,
3 2018, p. 2, lines 20-23. To make findings and a determination as to the alleged text, and
4 as to any alleged fraudulent representations, and other facts about the case, the Court
5 must grant Ignacio an evidentiary hearing so he has a proper forum to prove his case.
6

7 The Court expressed concern that Rosie did not know of the fraud, and asked
8 Ignacio to explain why, if Rosie innocently repeated the fraudulent claim of paternity
9 perpetrated by Henry that did not cut off his claim for relief. There are only two
10 possibilities: 1. Rosie participated in the fraud, in which case the above analysis stands,
11 and Ignacio should be granted an evidentiary hearing. 2. Rosie did not know of the
12 fraud, in which case she is also a victim of Henry's ruse. Though she may choose not to
13 pursue a claim against Henry that does prevent Ignacio from pursuing his claim.
14 Ignacio's counsel knows of no legal rule which allows a perpetrator of fraud to get away
15 with fraud, because he was able to pass on the fraud via a third party. Respectfully, it
16 makes no legal sense for the Court to believe that, somehow, Henry should get away
17 with perpetrating a fraud, because he convinced one innocent victim to pass his
18 fraudulent representations on to another innocent individual. Thus, whether Rosie
19 participated in the fraud or not, Ignacio should be allowed his day in court to prove his
20 claims.
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1 **B. THE COURT ERRED BY RELYING ON CASE LAW THAT IS**
2 **DIFFERENTIATED FROM THE FACTS OF THIS CASE.**

3 The Court, in its findings stating the law upon which it based its order, first relied
4 on statutory presumptions, and the fact that DNA is not dispositive of paternity, citing
5 *Love v. Love*, 959 P.2d 523, 114 Nev. 572 (1998). Ignacio contends that, if he is given
6 the opportunity to prove his case, he will have overcome the statutory presumption. In
7 addition, though the holding in *Love* is the state of the law, the facts of that case are
8 materially different than the facts in the case at bar, such that the facts of this case must
9 be fully litigated for the Court to make findings, and to make a legal and equitable
10 decision regarding paternity.

11 In *Love*, the person holding himself out to be the father of the child found out,
12 after raising the child as his own until the child was 11 years old, based on DNA
13 evidence, that he was not the biological father of the child. He then tried to escape his
14 child support and other obligations by claiming that, because he was not the child's
15 biological father, he was not liable.

16 In contrast, Ignacio is not attempting to escape paying child support or any other
17 duties; he was denied the chance to raise his child twice by someone who perpetrated a
18 fraud, so that this someone, Henry Oliva, could maintain his relationship with the
19 child's natural mother, Rosie. Ignacio is trying to assume the parental rights and
20 responsibilities he was denied. Even though, if the Court were to order a DNA paternity
21 test, it would not be dispositive, the equities and competing interests in this case - what

1 is in the child's best interests, Ignacio's rights and parental preference as the biological
2 father, whether Henry should get away with fraud - are different than the equities and
3 competing interests in the *Love* case. Thus, the Court should allow the case to be
4 litigated, to determine the proof of, and effect of, Ignacio's allegations, and then to
5 weigh the competing interests accordingly.
6

7 The Court also relies heavily on *In re Marriage of Freeman*, 45 Cal. App. 4th
8 1437, 53 Cal. Rptr. 2d 439, (1996). See Court's Order Entered June 20, 2018, p. 4, lines
9 10-27. The Court uses the case as persuasive authority to limit the time a paternity claim
10 can be made, and to stress that one holding himself out to be a parent for a length of
11 time can foreclose any claim for paternity by another party. *Id.*
12

13 Nonetheless, *Freeman* is differentiated from the case at bar in the same way that
14 *Love* is differentiated. *Freeman* represents another case where the person who held
15 himself out to be the father of a child, who, upon finding out that he was not the
16 biological father, attempted to relinquish himself of his parental obligations. Again,
17 Ignacio's case is different, because he has been prevented from taking responsibility for
18 the child.
19

20 The case law cited by the Court is not dispositive, because the weighing and
21 balancing of equities, along with legal findings, are different, with different competing
22 interest, as argued *supra*. This differentiation of the facts of the cited case law, as
23 opposed to the case at bar, requires that the Court, in the interest of justice, grant Ignacio
24 an evidentiary hearing.
25
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1 **C. DENYING IGNACIO HIS REQUESTED RELIEF WOULD BE**
2 **TANTAMOUNT TO TERMINATING HIS PARENTAL RIGHTS WITHOUT**
3 **DUE PROCESS, WHICH WOULD BE A GROSS INJUSTICE, AND WOULD**
4 **NOT SERVE THE BEST INTERESTS OF THE CHILD.**

5 Ignacio is asking this Court to allow him an evidentiary hearing to prove his case.
6 If the Court does not allow him the chance to do so, the result will be that Ignacio will
7 have had his parental rights, in effect, terminated, without due process. If, as the
8 biological father of the child, he was denied the chance to raise the child as a parent,
9 because another party was successful at perpetrating a fraud on both Ignacio and the
10 Court, the result would be the same as if his parental rights were terminated by the
11 successful fraud.
12

13 Ignacio was not afforded the parental preference to which he is entitled, and
14 justice demands that this Court grant him an evidentiary hearing, and temporary relief.
15 Once the Court has heard the evidence, the Court will have afforded Ignacio due
16 process, and the Court can make informed findings of fact, conclusions of law, and legal
17 and equitable orders, having weighed the evidence and competing interests. Thus, the
18 Court should grant Ignacio his requested relief.
19
20
21

22 **III.**

23 **ATTORNEY'S FEES**

24 **A. IGNACIO SHOULD BE AWARDED ATTORNEY'S FEES AND COSTS.**

25 NRS 18.010 Award of attorney's fees.

26 1. The compensation of an attorney and counselor for his services is
27 governed by agreement, express or implied, which is not restrained by law.
28

1 2. In addition to the cases where an allowance is authorized by specific
2 statute, the court may make an allowance of attorney's fees to a prevailing
3 party:

4 (a) When he has not recovered more than \$20,000; or

5 (b) Without regard to the recovery sought, when the court finds that the
6 claim, counterclaim, cross-claim or third-party complaint or defense of the
7 opposing party was brought or maintained without reasonable ground or to
8 harass the prevailing party. The court shall liberally construe the provisions
9 of this paragraph in favor of awarding attorney's fees in all appropriate
10 situations. It is the intent of the Legislature that the court award attorney's
11 fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of
12 the Nevada Rules of Civil Procedure in all appropriate situations to punish
13 for and deter frivolous or vexatious claims and defenses because such
14 claims and defenses overburden limited judicial resources, hinder the
15 timely resolution of meritorious claims and increase the costs of engaging
16 in business and providing professional services to the public.

17 3. In awarding attorney's fees, the court may pronounce its decision on the
18 fees at the conclusion of the trial or special proceeding without written
19 motion and with or without presentation of additional evidence.

20 2. Subsections 2 and 3 do not apply to any action arising out of a written
21 instrument or agreement which entitles the prevailing party to an award
22 of reasonable attorney's fees.

23 Ignacio has unnecessarily incurred substantial fees to bring forward this Motion,
24 and Defendant should be ordered to pay those fees. The reasonableness of counsel's
25 fees are assessed in light of the factors recited in Brunzell v. Golden Gate National
26 Bank, 85 Nev. 345, 455 P.2d 31 (1969) and Miller v. Wilfong, 121 Nev. 619, 119 P.3d
27 727 (2005). The factors include:

28 Qualities of the advocate;

1. Character of the work to be done;
2. Work actually performed by the lawyer; and
3. The result.

1 Attorney Piroozi has been practicing for almost twelve (12) years. She has built a
2 name and reputation in the community for attempting to resolve matters in the best
3 interest of the minor children. Attorney Piroozi has litigated matters in State court,
4 Federal court and before the U.S. court of Appeals.
5

6 **IV.**

7 **CONCLUSION**

8
9 The Plaintiff prays for the following relief:

10 1. For an Order that the Court grant leave to amend the Plaintiff's Complaint
11 for Custody to reflect the existence and paternity of an additional child who is the issue
12 of the parties, to wit; Alan Oliva, born October 18, 2011.
13

14 2. For an Order setting aside the Custody Decree;
15

16 3. For an Order that the parties share joint legal and joint physical custody of
17 the minor children, modifying the current custody Order for the minor child Jazlynn
18 Rose Martinez Avila;
19

20 4. For an Order that the parties pay child support pursuant to NRS 125C.070,
21 and Wright v. Osburn, 114 Nev. 1367, 70 P.2d 1071 (1998);
22

23 5. For an Order that the Defendant reimburse the Plaintiff for the attorney's
24 fees she had to expend for having to file this Opposition with the Court, pursuant to
25 NRS 18.010; NRS 22.100, and EDCR 5.11; and
26

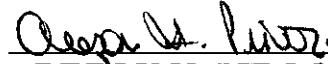
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1 6. For such other relief as this Court deems just and proper in the premises.

2 **DATED** this 6th day of July, 2018.

Respectfully Submitted by:

3
4
5 

6 **AREZOU H. PIROOZI, ESQ.**

NEVADA BAR# 10187

7 **PIROOZI LAW GROUP, PLLC.**

8 509 SOUTH SIXTH STREET

LAS VEGAS, NV 89101

9 TEL: (702) 260-1010

10 FAX: (702) 364-2010

11 EMAIL: apiroozi@piroozilawgroup.com

12 Attorney for Plaintiff, Ignacio Avila, Jr.

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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

IGNACIO AVILA, JR., being first duly sworn, deposes and says:

That he is the Defendant in the above-entitled action; that he has read the foregoing
VERIFIED MOTION AMEND THE COMPLAINT FOR CUSTODY, TO
ESTABLISH JOINT LEGAL AND PRIMARY PHYSICAL CUSTODY, TO SET
ASIDE THE CUSTODY DECREE, TO MODIFY CUSTODY, FOR CHILD
SUPPORT, AND FOR ATTORNEY'S FEES AND COSTS and know the contents
thereof; the same is true of his own knowledge except as to those matters therein stated
on information and belief and, as to those matters, he believes them to be true.

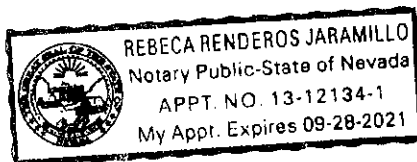


IGNACIO AVILA, JR.

SUBSCRIBED AND SWORN to before me
this 6th day of July, 2018.



NOTARY PUBLIC in and for said
County and State



MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Ignacio Avila, Jr.
Plaintiff/Petitioner
v. Rosie Elena Martinez
Defendant/Respondent

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

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

<input checked="" type="checkbox"/> \$25	The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-	
<input type="checkbox"/> \$0	The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
<input type="checkbox"/>	The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
<input type="checkbox"/>	The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
<input type="checkbox"/>	The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
<input type="checkbox"/>	Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

<input checked="" type="checkbox"/> \$0	The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
<input checked="" type="checkbox"/>	The Motion/Opposition is being filed in a case that was not initiated by joint petition.
<input type="checkbox"/>	The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
-OR-	
<input type="checkbox"/> \$129	The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-	
<input type="checkbox"/> \$57	The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:	
<input checked="" type="checkbox"/> \$0	<input type="checkbox"/> \$25 <input type="checkbox"/> \$57 <input type="checkbox"/> \$82 <input type="checkbox"/> \$129 <input type="checkbox"/> \$154

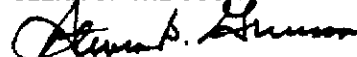
Party filing Motion/Opposition: Ignacio Avila Date 7/6/18

Signature of Party or Preparer [Signature]

AOS

**DISTRICT COURT , CLARK COUNTY
CLARK COUNTY, NEVADA**

Electronically Filed
8/3/2018 5:26 PM
Steven D. Grierson
CLERK OF THE COURT



IGNACIO AVILA, JR.

Plaintiff

CASE NO: D-15-515892-C

vs

HEARING DATE/TIME: 09/11/2018 at 10:00am

ROSIE ELENA MARTINEZ; ET AL

Defendant

DEPT NO: L

AFFIDAVIT OF SERVICE

ALLAN SANDOVAL being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the MOTION TO RECONSIDER THE ORDER ENTERED JUNE 20, 2018, on the 23rd day of July, 2018 and served the same on the 1st day of August, 2018, at 17:46 by:

delivering and leaving a copy with the servee HENRY OLIVA at (address) 5729 AWAKENING ST, NORTH LAS VEGAS NV 89081

Pursuant to NRS 53.045

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

EXECUTED this 01 day of Aug, 2018.

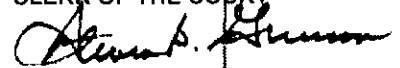


**ALLAN SANDOVAL
R#039810**

Junes Legal Service, Inc. - 630 South 10th Street - Suite B - Las Vegas NV 89101 - 702.579.6300 - fax 702.259.6249 - Process License #1066

EP205273

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1 **OPPC**

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6 (702) 586-3513
7 (702) 586-3690 FAX
8 sly@stevenyarmylaw.com
9 Unbundled Attorney for Third Party Defendant, Henry Oliva

10 **DISTRICT COURT, FAMILY DIVISION,**
11 **CLARK COUNTY, NEVADA**

12 **IGNACIO AVILA, JR.,**

13 **Plaintiff,**

14 **v**

15 **ROSIE MARTINEZ,**

16 **Defendant.**

17 **HENRY OLIVA**

18 **Counter-Defendant**

Case No: D-15-515892-C

Dept. No.: L

Hearing Date: September 11, 2018

Hearing Time: 10:00 a.m.

19 **COUNTER-DEFENDANT HENRY OLIVA'S OPPOSITION TO MOTION TO**
20 **RECONSIDER THE ORDER ENTERED JUNE 20, 2018; AND OPPOSITION TO**
21 **PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS AND COUNTER-**
22 **DEFENDANTS MOTION FOR ATTORNEY'S FEES AND COSTS**

23 COMES NOW the Intervenor, HENRY OLIVA, by and through his attorney Steven L.
24 Yarmy, Esq., and hereby respectfully requests that this Court deny Plaintiff's Motion to
25 Reconsider the Order Entered June 20, 2018, and award fees to Counter-Defendant.

26 The Opposition to Plaintiff's Motion to Reconsider; and Opposition to Motion for
27 Attorney's Fees and Costs and Counter-Defendant's Motion for Attorney's Fees and Costs is
28

Opposition to Motion Reconsider June 20, 2018 Order

1 supported by the pleadings and papers on file herein, the memorandum of points and authorities
2 below, and any oral argument this Court sees fit to allow.

3
4 **STATEMENT OF FACTS-PROCEDURAL HISTORY:**

5 On January 25, 2018 the Plaintiff filed a Verified Motion to Amend the Complaint for
6 Custody, To Establish Joint Legal and Joint Physical Custody, To Set Aside the Custody Decree,
7 To Modify Custody, For Child Support, And for Attorney s Fees And Costs.

8 The motion was referred to Family Mediation.

9 March 29, 2018 the Court filed it's minute order after mediation was unsuccessful.

10
11 Thereafter, on June 15, 2018 the Order was filed essentially denying all the Plaintiff's
12 request in the Verified Motion to Amend the Complaint for Custody, To Establish Joint Legal
13 and Joint Physical Custody, To Set Aside the Custody Decree, To Modify Custody, For Child
14 Support, And for Attorney s Fees And Costs, with the exception of allowing

15 On June 20, 2018 the Court filed the Notice of Entry of Order relating to the March 29,
16 2018 minute Order, and June 15, 2018 Order.

17 Plaintiff's Motion to Reconsider was filed on July 6, 2018. Plaintiff alleges the Motion
18 was served and filed affidavit of Service on August 3, 2018.

19 The hearing for Plaintiff's Motion is set for September 11, 2018 at 10:00 a.m.

20
21 **POINTS AND AUTHORITIES:**

22
23 **I. COUNTER-DEFENDANT HENRY OLIVA'S OPPOSITION TO MOTION TO**
24 **RECONSIDER THE ORDER ENTERED JUNE 20, 2018**

25 **A. This Court should deny Plaintiff's Motion to Reconsider Order Entered June 20, 2018**
26 **because pursuant to EDCR 2.24(b) the Motion was not timely filed.**

27 **Eighth Judicial Court Rules-Rule 2.24 – Rehearing of motions.**

28 (a) No motions once heard and disposed of may be renewed in the same cause,
nor may the same matters therein embraced be reheard, unless by leave of the

Opposition to Motion Reconsider June 20, 2018 Order

1 court granted upon motion therefor, after notice of such motion to the adverse
2 parties.

3 (b) A party seeking reconsideration of a ruling of the court, other than any order
4 which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60,
5 **must file a motion for such relief within 10 days after service of written**
6 **notice of the order** or judgment unless the time is shortened or enlarged by order.
7 A motion for rehearing or reconsideration must be served, noticed, filed and heard
8 as is any other motion. A motion for reconsideration does not toll the 30-day
9 period for filing a notice of appeal from a final order or judgment.

10 (c) If a motion for rehearing is granted, the court may make a final disposition of
11 the cause without reargument or may reset it for reargument or resubmission or
12 may make such other orders as are deemed appropriate under the circumstances of
13 the particular case.

14 Plaintiff asserts that "The Court order was filed on June 15, 2018., and a Notice of Entry
15 of Order was entered on June 20, 2018." "Thus, Ignacio has timely filed the instant motion,
16 within 10 days of the Notice of Entry of the Order" See Plaintiff's Motion Page 6, Paragraphs
17 **1 through 4.**

18 This s simply incorrect. The Notice of Motion by Plaintiff's own admission and this
19 Court's record clearly shows that Notice of Entry of the Order was entered on June 20, 2018.

20 Plaintiff's Motion is untimely. The Plaintiff filed his Motion to Reconsider the Order
21 entered June 20, 2018 on July 6, 2018. That is 16 days after the Entry of the Order.

22 Under EDCR 2.24, motions seeking reconsideration of an order must be filed no later
23 than ten days after the order's notice of entry is served. Thus, the district court properly denied
24 appellant's motion as untimely under both NRCP 60(b) and EDCR 2.24. *Ibeabuchi v. Chesnoff*,
25 **373 P.3d 924(Table) (Nev., 2011)**

26 Plaintiff's Motion should be denied as untimely filed.

27 **B. This Court should deny Plaintiff's Motion to Reconsider Order Entered June 20, 2018**
28 **because the Plaintiff has not presented substantially different evidence or cited a clear**
error in law.

district court "may reconsider a previously decided issue if **substantially different**
evidence is subsequently introduced or the **decision is clearly erroneous.**" *Masonry &*
Tile Contractors Ass'n. of Southern Nevada v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737,

1 741, 941 P.2d 486, 489 (1997). Thus, if the district court properly determines the earlier
2 decision was clearly erroneous, the trial judge does not err in reconsidering the motion.
3 Id. Hunsen v. Aguilar (Nev. App., 2016)
4 No different substantial evidence

5 The Plaintiff does not even offer any additional evidence. It is the same arguments made
6 at hearing in this matter before. This Court considered the Plaintiff's fraud arguments.

7 The Court should deny Plaintiff's Motion because there has not been any different
8 substantial evidence presented.

9 No clear error in law.

10 The Plaintiff completely fails to cite any error in law made by this Court. Although, the
11 Plaintiff may disagree with the Courts findings that *Love v. Love* is controlling in this matter, it
12 does not mean there was an error in the law. This Court was well versed in the facts of this case
13 and how the facts apply to *Love v. Love*.

14 The Plaintiff then attempts to convince this Court to Reconsider because it wrong for the
15 Court to relying on *In Re Marriage of Freeman*. The Plaintiff attempts to show clear error in the
16 law by not agreeing with the Courts decision. The Plaintiff has made no showing by any case
17 citation that this Court made a clear error in law. The Plaintiff merely says neither *Love v. Love*
18 or *In Re Freeman* are not dispositive. The Plaintiff cited no real authority to the contrary.

19 This is a case where the Plaintiff just does not like the results. There is no cause for
20 Reconsidering this Courts June 20, 2018 order.

21 The Plaintiff has not demonstrated he is entitled to an Order of Reconsideration. The
22 Motion was untimely filed; The Plaintiff did not present any different substantial evidence; and
23 the Plaintiff did not cite or demonstrate a clear error in law.

24 ///

25 ///

1 **II. OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND**
2 **COSTS AND COUNTER-DEFENDANTS MOTION FOR ATTORNEY'S FEES AND**
3 **COSTS**

4 ***This Courts should Deny Plaintiff's Motion for Attorney's Fees and Costs because the***
5 ***Counter-Defendant is merely defending a Reconsideration Motion.***

6 It is the Plaintiff who is bringing action to the Court after getting a ruling he did not like.

7 To asked that the Counter-defendant pay because the Plaintiff choices to file a Motion to
8 Reconsider because he did not like the outcome is not enough to award fees lacking any other
9 authority or disposition. This Motion is a choice unrelated to any actions taken by the Counter-
10 Defendant.

11 The Plaintiff should be denied fees for bring a Motion to Reconsideration. However, in
12 the alternative this **Counter-Defendant is requesting fees and costs for having to defend an**
13 **action in which the Court has previously ruled.** The Plaintiff is in essence forcing the
14 Counter-Defendant to incur fees in a matter he already prevailed on without the Plaintiff.
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CONCLUSION:

The Plaintiff's motion for reconsideration is untimely; the Plaintiff's motion lacks any evidence at all; and the Plaintiff's motion cannot cite authority showing this Court made a clear error of law.

As such, the Counter-Defendant Respectfully request than this Court deny Plaintiff's Motion to Reconsider Order Entered June 20, 2018 and award the Counter-defendant his attorney's fees and cost.

Dated this 13th day of August 2018

/s/Steven L. Yarmy, Esq.

Steven L. Yarmy, Esq.

Nevada Bar No. 8733

7464 West Sahara Avenue

Las Vegas, Nevada 89117

(702) 586-3513

(702) 586-3690 FAX

sly@stevenyarmylaw.com

Unbundled Attorney for Third Party Defendant.

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

IGNACIO ALIUA JR.

Plaintiff/Petitioner

v. HENRY OLIVA

Defendant/Respondent

Case No. D-15-515892-C

Dept. L

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

<input checked="" type="checkbox"/> \$25	The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-	
<input type="checkbox"/> \$0	The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
<input type="checkbox"/>	The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
<input type="checkbox"/>	The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
<input type="checkbox"/>	The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
<input type="checkbox"/>	Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

<input type="checkbox"/> \$0	The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
<input type="checkbox"/>	The Motion/Opposition is being filed in a case that was not initiated by joint petition.
<input type="checkbox"/>	The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
-OR-	
<input type="checkbox"/> \$129	The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-	
<input type="checkbox"/> \$57	The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

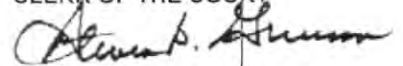
Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☐ \$0 ☒ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Steven L. Yarmy, Esq. Date 8/14/2018

Signature of Party or Preparer 



CSERV

Steven L. Yarmy, Esq.

Nevada Bar No. 8733

7464 West Sahara Avenue

Las Vegas, Nevada 89117

(702) 586-3513

(702) 586-3690 FAX

sly@stevenyarmylaw.com

Unbundled Attorney for Third Party Defendant, Henry Oliva

DISTRICT COURT, FAMILY DIVISION,

CLARK COUNTY, NEVADA

IGNACIO AVILA, JR.,

Plaintiff,

v

ROSIE MARTINEZ,

Defendant.

HENRY OLIVA

Counter-Defendant

Case No: D-15-515892-C

Dept. No.: L

Hearing Date: September 11, 2018

Hearing Time: 10:00 a.m.

CERTIFICATE OF SERVICE

I STEVEN L. YARMY, ESQ, the undersigned, HEARBY CERTIFY that service of the COUNTER-DEFENDANT HENRY OLIVA'S OPPOSITION TO MOTION TO RECONSIDER THE ORDER ENTERED JUNE 20, 2018; AND OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND COSTS AND COUNTER-DEFENDANTS MOTION FOR ATTORNEY'S FEES AND COSTS was made on August 14, 2018 by personally depositing a copy of the same in the United States mail in Las Vegas, Nevada, postage prepaid, and addressed as follows:

CCM Opposition to Motion Reconsider June 20, 2018 Order

1 Arezou H. Piroozi, Esq.
2 POROOZI LAW GROUP, PLLC
3 509 South Sixth Street
4 Las Vegas NV 89101

5 Emailed on August 13, 2018 to apiroozi@piroozilawgroup.com

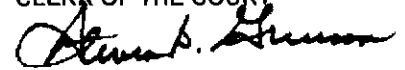
6 /s/Steven L. Yarmy, Esq.

7 Steven L. Yarmy, Esq.
8 Nevada Bar No. 8733
9 7454 West Sahara Avenue
10 Las Vegas, Nevada 89117
11 Unbundled Attorney for Third Party Defendant
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AOS

**DISTRICT COURT , CLARK COUNTY
CLARK COUNTY, NEVADA**

Electronically Filed
8/30/2018 10:15 AM
Steven D. Grierson
CLERK OF THE COURT



IGNACIO AVILA, JR.

Plaintiff

vs

ROSIE ELENA MARTINEZ; ET AL

Defendant

CASE NO: D-15-515892-C

HEARING DATE/TIME: 09/11/2018 at 10:00am

DEPT NO: L

AFFIDAVIT OF SERVICE

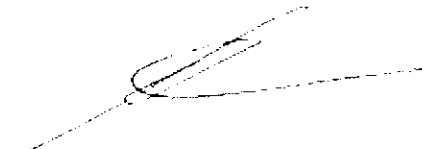
ALLAN SANDOVAL being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the MOTION TO RECONSIDER THE ORDER ENTERED JUNE 20, 2018, on the 23rd day of July, 2018 and served the same on the 15th day of August, 2018, at 18:29 by:

delivering and leaving a copy with the servee ROSIE ELENA MARTINEZ at (address) 5005 LOSEE RD. #3019, NORTH LAS VEGAS NV 89081

Pursuant to NRS 53.045

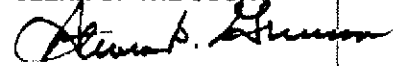
I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

EXECUTED this 15 day of Aug, 2018.



**ALLAN SANDOVAL
R#039810**

Junes Legal Service, Inc. - 630 South 10th Street - Suite B - Las Vegas NV 89101 - 702.579.6300 - fax 702.259.6249 - Process License #1068



NOT

1 AREZOU H. PIROOZI, ESQ.

2 Nevada Bar# 10187

3 PIROOZI LAW GROUP, PLLC.

4 509 SOUTH SIXTH STREET

5 LAS VEGAS, NV 89101

6 TEL: (702) 260-1010

7 FAX: (702) 364-2010

8 EMAIL: apiroozi@piroozilawgroup.com

9 *Attorney for Plaintiff, Ignacio Avila, Jr.*

10
11 DISTRICT COURT
12 FAMILY DIVISION
13 CLARK COUNTY, NEVADA

14 IGNACIO AVILA, JR.,

15 Plaintiff,

16 vs.

17 ROSIE ELENA MARTINEZ,
18 HENRY OLIVA,

19 Defendant.

CASE NO: D-15-515892-C

DEPT: L

HEARING DATE: 9/11/2018

HEARING TIME: 10:00 a.m.

ORAL ARGUMENT REQUESTED?
NO

20
21 **NOTICE OF NON-OPPOSITION TO PLAINTIFF'S MOTION TO**
22 **RECONSIDER THE ORDER ENTERED JUNE 20, 2018.**

23 COMES NOW Plaintiff, IGNACIO AVILA, JR., by and through his attorney of
24 record, AREZOU H. PIROOZI, ESQ., of PIROOZI LAW GROUP, PLLC, and hereby
25 provides the Court Notice of Non-Opposition to his MOTION which was filed with this
26 Court on July 6, 2018, and personally served on Defendant, ROSIE ELENA
27 MARTINEZ, on August 15, 2018.(Please see attached the Affidavit of Service as
28 "EXHIBIT 1") Pursuant to EDCR 2.20(c), Defendant was a afforded ten (10) days to

1 file an Opposition and the failure "to serve and file written Opposition may be
2 constructed as an admission that the Motion is meritorious and consent to granting the
3 same." The last day for Defendant to file an Opposition to Plaintiff's Motion to
4 Reconsider the Order Entered June 20, 2018 was on August 25, 2018. Pursuant to
5 EDCR 2.23 (b), AREZOU H. PIROOZI, ESQ., of PIROOZI LAW GROUP, PLLC, will
6 prepare and submit to chambers an Order together with a courtesy copy of this
7 Notice, and respectfully request that the Court (1) consider his Motion on its
8 merits without oral argument; (2) grant the same and enter an Order granting
9 **PLAINTIFF'S MOTION TO RECONSIDER THE ORDER ENTERED JUNE 20,**
10 **2018;** and, to exclude any argument by Defendant, ROSIE ELENA MARTINEZ from
11 consideration at the hearing presently scheduled for September 11, 2018, at 10:00 a.m.
12 due to her failure to timely serve and file an Opposition to Plaintiff's Motion pursuant to
13 EDCR 2.20(c).
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19 Rule 2.23 Motions Decided without oral argument at the request of the judge, the
20 clerk must be promptly bring to the judge's attention every motion to which with no
21 response has been timely filed. The clerk must also submit all motions, whether
22 responded to or not, to the judge not less than 3 days before scheduled hearing.
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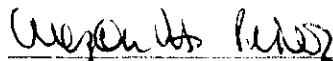
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1 If the time to oppose a motion has passed and no opposition has been filed, counsel for
2 the moving.

3 **DATED** this 5th day of September, 2018. Respectfully submitted by:

4
5 

6 **AREZOU H. PIROOZI, ESQ.**

7 Nevada Bar# 10187

8 **PIROOZI LAW GROUP, PLLC.**

9 509 SOUTH SIXTH STREET

10 LAS VEGAS, NV 89101

11 TEL: (702) 260-1010

12 FAX: (702) 364-2010

13 EMAIL: apiroozi@piroozilawgroup.com

14 Attorney for Plaintiff, Ignacio Avila, Jr.

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EXHIBIT 1

AOS

**DISTRICT COURT , CLARK COUNTY
CLARK COUNTY, NEVADA**

Electronically Filed
8/30/2018 10:15 AM
Steven D. Grierson
CLERK OF THE COURT



IGNACIO AVILA, JR.

Plaintiff

VS

ROSIE ELENA MARTINEZ; ET AL

Defendant

CASE NO: D-15-515892-C

HEARING DATE/TIME: 09/11/2018 at 10:00am

DEPT NO: L

AFFIDAVIT OF SERVICE

ALLAN SANDOVAL being duly sworn says: That at all times herein affiant was and is a citizen of the United States, over 18 years of age, not a party to or interested in the proceedings in which this affidavit is made. That affiant received 1 copy(ies) of the MOTION TO RECONSIDER THE ORDER ENTERED JUNE 20, 2018, on the 23rd day of July, 2018 and served the same on the 15th day of August, 2018, at 18:29 by:

delivering and leaving a copy with the servee ROSIE ELENA MARTINEZ at (address) 5005 LOSEE RD. #3019, NORTH LAS VEGAS NV 89081

Pursuant to NRS 53.045

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

EXECUTED this 15 day of Aug, 2018.



ALLAN SANDOVAL
R#039810

**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, 2018 10:00 AM All Pending Motions

HEARD BY: Hardcastle, Gerald W.

COURTROOM: Courtroom 06

COURT CLERK: Victoria Pott

PARTIES:

Henry Oliva, Third Party Defendant, present
Ignacio Avila, Plaintiff, Counter Defendant, Arezou Piroozi, Attorney, present
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, Pro Se
not present

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.

PRINT DATE:	09/12/2018	Page 1 of 2	Minutes Date:	September 11, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

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.

INTERIM CONDITIONS:

FUTURE HEARINGS:

PRINT DATE:	09/12/2018	Page 2 of 2	Minutes Date:	September 11, 2018
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

Steven D. Grierson

JUDG

Steven L. Yarmy, Esq.
Nevada Bar No. 8733
7464 West Sahara Avenue
Las Vegas, Nevada 89117
(702) 586-3513
(702) 586-3690 FAX
sly@stevenyarmylaw.com
*Unbundled Attorney for
Counter-Defendant*

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

IGNACIO AVILA, JR.,

Plaintiff,

v

ROSIE MARTINEZ,

Defendant.

HENRY OLIVA,

Counter-Defendant.

Case No: D-15-515892-C

Dept. No.: L

Hearing Date: September 11, 2018
Hearing Time: 10:00 a.m.

**ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION; AND
JUDGEMENT FOR AN AWARD OF ATTORNEY'S FEES**

Plaintiff's Motion to Reconsider the Order Entered June 20, 2018 came on for hearing on the above referenced time. Present was Counter-Defendant HENRY OLIVA, and his attorney Steven L. Yarmy, Esq., and Plaintiff IGNACIO AVILA, JR., and his attorney Arezou H. Piroozi, Esq.

Non-Final Dispositions:
☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Start
Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
☒ With Judicial Conf/Hrg
☐ By ADR
Trial Dispositions:
☐ Judgment Reached by Trial

RECEIVED
SEP 17 2018
DEPT. 1

1 After considering the Pleadings filed therein, and argument by counsel, the Court
2 DENIED Plaintiff's Motion to Reconsider the Order Entered June 20, 2018.

3 After considering the Pleadings filed therein, and argument by counsel, the Court granted
4 Counter-Defendant HENRY OLIVA'S COUNTER MOTION FOR ATTORNEY'S FEES AND
5 COSTS in the amount of \$1,000.00 for attorney's fees.
6

7 Further, the Court has reduced the award of Counter-Defendant's attorney's fees to
8 \$1,000.00.
9

10 **ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

11 For the foregoing:


12 **IT IS ORDERED** that Plaintiff's Motion to Reconsider the Order Entered June 20, 2018
13 is hereby DENIED.

14 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA'S COUNTER
15 MOTION FOR ATTORNEY'S FEES AND COSTS against the Plaintiff is hereby GRANTED.
16

17 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA is awarded
18 \$1,000.00 for his attorney's fees against Plaintiff IGNACIO AVILA, JR.

19 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA'S award of
20 attorney's fees in the amount of \$1,000.00 against the Plaintiff IGNACIO AVILA, JR is hereby
21 reduced to Judgement.
22

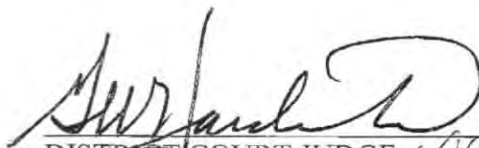
23 Dated this 19 day of September, 2018

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26 DISTRICT COURT JUDGE VP
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28

JUDGEMENT


IT IS ORDERED that Counter-Defendant HENRY OLIVA recovers of and from Plaintiff IGNACIO AVILA, JR. the sum of \$1,000.00 for attorney's fees.

Dated this 19th day of Sept, 2018


DISTRICT COURT JUDGE
GERALD W. HARDCASTLE

Respectfully Submitted BY:


Steven L. Yarmy, Esq.
Nevada Bar No. 8733
7464 West Sahara Avenue
Las Vegas, Nevada 89117
(702) 586-3513
(702) 586-3690 FAX
sly@stevenyarmylaw.com
Unbundled Attorney for
Counter-Defendant



1 **NOE**

2 Steven L. Yarmy, Esq.
3 Nevada Bar No. 8733
4 7454 West Sahara Avenue
5 Las Vegas, Nevada 89117
6 (702) 586-3513
7 (702) 586-3690 FAX
8 sly@stevenyarmylaw.com
9 Attorney for Counter-Defendant Henry Oliva

10
11 **DISTRICT COURT, FAMILY DIVISION,**
12
13 **CLARK COUNTY, NEVADA**

14 **IGNACIO AVILA, JR.,**

15 Plaintiff,

16 v

17 **ROSIE MARTINEZ,**

18 Defendant.

19 **HENRY OLIVA,**

20 Counter-Defendant.

Case No: D-15-515892-C

Dept. No.: L

Hearing Date: September 11, 2018

Hearing Time: 10:00 a.m.

21 **NOTICE OF ENTRY OF ORDER ON PLAINTIFF'S MOTION FOR**
22 **RECONSIDERATION; AND JUDGEMENT FOR AN AWARD OF ATTORNEY'S FEES**

23 TO: IGNACIO AVILA, JR., and his attorney, Arezou H. Piroozi, Esq.:

24 TO: ROSIE MARTINEZ:

25 **PLEASE TAKE NOTICE THAT** that on September 19, 2018 the Judge in the above
26 entitled matter executed an **Order DENYING Plaintiff's Motion** For Reconsideration of the
27 Court's June 20, 2018, and a **Judgement in Favor of Counter-Defendant** Henry Oliva against
28 the Plaintiff Ignacio Avila, Jr. for attorney's fees in the amount of \$1,000.00. The Order and

Notice of Entry of Order

1 Judgement was filed on September 21, 2018 a copy of which is attached hereto as **EXHIBIT**

2 "A"

3 DATED this 23rd day of September 2018

4
5 BY: 

6 Steven L. Yarmy, Esq

7 Nevada Bar No. 8733

8 7454 West Sahara Avenue

9 Las Vegas, Nevada 89117

10 *Attorney for Counter-Defendant Henry Oliva*

11 ///

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Notice of Entry of Order

AA000361

1 **CERTIFICATE OF MAILING**

2 I Steven L. Yarmy, Esq. the undersigned, HEARBY CERTIFY that service of the
3 foregoing NOTICE OF ENTRY OF ORDER ON PLAINTIFF'S MOTION FOR
4 RECONSIDERATION; AND JUDGEMENT FOR AN AWARD OF ATTORNEY'S FEES was
5 made on 25 day of September 2018 by personally depositing a true copy thereof the same in
6 the United States mail in Las Vegas,

7 Nevada, postage prepaid, addressed as follows:

8 Arezou H. Piroozi, Esq.
9 POROOZI LAW GROUP, PLLC
10 509 South Sixth Street
Las Vegas NV 89101


11 ROSIE ELENA MARTINEZ
12 5005 Losee Road
#3019
13 North Las Vegas, Nevada 89081

14 ROSIE ELENA MARTINEZ
15 5729 Awakening Street
North Las Vegas, Nevada 89081

16 ROSIE ELENA MARTINEZ
17 1221 West Warm Springs road
18 Henderson, Nevada 89014

19 And on September 25, 2018 VIA email as follows:

20 apiroozi@piroozilawgroup.com

21
22 
23 Steven L. Yarmy, Esq.
24 Nevada Bar No. 8733

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Notice of Entry of Order

AA000362

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EXHIBIT "A"

Notice of Entry of Order

AA000363

Steven D. Grierson

JUDG

Steven L. Yarmy, Esq.
Nevada Bar No. 8733
7464 West Sahara Avenue
Las Vegas, Nevada 89117
(702) 586-3513
(702) 586-3690 FAX
sly@stevenyarmylaw.com
Unbundled Attorney for
Counter-Defendant

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

IGNACIO AVILA, JR.,

Plaintiff,

v

ROSIE MARTINEZ,

Defendant.

HENRY OLIVA,

Counter-Defendant.

Case No: D-15-515892-C

Dept. No.: L

Hearing Date: September 11, 2018

Hearing Time: 10:00 a.m.

**ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION; AND
JUDGEMENT FOR AN AWARD OF ATTORNEY'S FEES**

Plaintiff's Motion to Reconsider the Order Entered June 20, 2018 came on for hearing on the above referenced time. Present was Counter-Defendant HENRY OLIVA, and his attorney Steven L. Yarmy, Esq., and Plaintiff IGNACIO AVILA, JR., and his attorney Arezou H. Piroozi, Esq.

Non-Trial Dispositions:

- ☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disclosed After Trial Start
- Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
☒ With Judicial Conf/Hrg
☐ By ADR
- Order and Judgment - 1

Trial Dispositions:

- ☐ Judgment Reached by Trial

RECEIVED
SEP 17 2018
DEPT. 1

1 After considering the Pleadings filed therein, and argument by counsel, the Court
2 DENIED Plaintiff's Motion to Reconsider the Order Entered June 20, 2018.
3

4 After considering the Pleadings filed therein, and argument by counsel, the Court granted
5 Counter-Defendant HENRY OLIVA'S COUNTER MOTION FOR ATTORNEY'S FEES AND
6 COSTS in the amount of \$1,000.00 for attorney's fees.

7 Further, the Court has reduced the award of Counter-Defendant's attorney's fees to
8 \$1,000.00.
9

10 **ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION**

11 For the foregoing;


12 **IT IS ORDERED** that Plaintiff's Motion to Reconsider the Order Entered June 20, 2018
13 is hereby DENIED.

14 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA'S COUNTER
15 MOTION FOR ATTORNEY'S FEES AND COSTS against the Plaintiff is hereby GRANTED.
16

17 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA is awarded
18 \$1,000.00 for his attorney's fees against Plaintiff IGNACIO AVILA, JR.

19 **IT IS FURTHER ORDERED** that Counter-Defendant HENRY OLIVA'S award of
20 attorney's fees in the amount of \$1,000.00 against the Plaintiff IGNACIO AVILA, JR is hereby
21 reduced to Judgement.
22

23 Dated this 19 day of September, 2018
24

25 
26 DISTRICT COURT JUDGE UP
27
28

JUDGEMENT


IT IS ORDERED that Counter-Defendant HENRY OLIVA recovers of and from Plaintiff IGNACIO AVILA, JR. the sum of \$1,000.00 for attorney's fees.

Dated this 19th day of Sept, 2018


DISTRICT COURT JUDGE

GERALD W. HARDCASTLE

Respectfully Submitted BY:


Steven L. Yarmy, Esq.
Nevada Bar No. 8733
7464 West Sahara Avenue
Las Vegas, Nevada 89117
(702) 586-3513
(702) 586-3690 FAX
sly@stevenyarmylaw.com
Unbundled Attorney for
Counter-Defendant

Steven D. Grierson

NOAS
AREZOU H. PIROOZI, ESQ.
NEVADA BAR# 10187
PIROOZI LAW GROUP, PLLC.
509 SOUTH SIXTH STREET
LAS VEGAS, NV 89101
TEL: (702) 260-1010
FAX: (702) 364-2010
EMAIL: apiroozi@piroozilawgroup.com
Attorney for Plaintiff, Ignacio Avila, Jr.

DISTRICT COURT,
FAMILY DIVISION
CLARK COUNTY, NEVADA

IGNACIO AVILA, JR.

Plaintiff,

vs.

ROSIE ELENA MARTINEZ,

Defendant.

CASE NO: D-15-515892-C

DEPT. NO: L

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the Plaintiff, IGNACIO AVILA, JR., by and through his attorney of record, AREZOU H. PIROOZI, ESQ., of PIROOZI LAW GROUP,

//

//

//

//

1 PLLC., hereby appeals to the Supreme Court of the State of Nevada the Notice of Entry
2 of Order filed on September 25, 2018, denying Plaintiff's Motion to Reconsider the Order
3 Entered June 20, 2018; And Judgement for An Award of Attorney's Fees entered on
4 September 25, 2018. Said motion was a tolling motion pursuant to *AA PRIMO*
5 *BUILDERS, LLC v. Washington*, 126 Nev. Adv. Op. 53, 245 P. 3d 1190 (2010).
6

7 **DATED** this 17th day of October, 2018. Respectfully Submitted by:
8

9
10 

11 **AREZOU H. PIROOZI, ESQ.**

12 NEVADA BAR# 10187

13 **PIROOZI LAW GROUP, PLLC.**

14 509 SOUTH SIXTH STREET

15 LAS VEGAS, NV 89101

16 TEL: (702) 260-1010

17 FAX: (702) 364-2010

18 EMAIL: apiroozi@piroozilawgroup.com

19 Attorney for Plaintiff, Ignacio Avila, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of **PIROOZI LAW GROUP, PLLC** ("the Firm"). I am over the age of eighteen (18) and not a party to the within action. I am readily familiar with the Firm's practice of collection and processing correspondence for mailing. Under the Firm's practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing document as described as "**NOTICE OF APPEAL**" on this 18th day of October, 2018, to all interested parties as follows:

☒ **BY MAIL:** Pursuant to NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows:

☒ **BY ELECTRONIC FILING:** via Court's electronic filing and service systems ("Wiznet") to all parties on the current service list.

☐ **BY FACSIMILE:** Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;

STEVEN L. YARMY, ESQ.

7454 West Sahara Avenue

Las Vegas, Nevada 89117

Attorney for Third Party Defendant, Henry Oliva.

ROSIE MARTINEZ

5005 Losee Road, Apt 3019

North Las Vegas, Nevada 89081

Defendant.

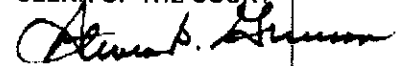
HENRY OLIVA

5729 Awakening Street

North Las Vegas, Nevada 89081

Third Party Defendant, Henry Oliva.


An employee of Piroozi Law Group, PLLC.



ASTA
AREZOU H. PIROOZI, ESQ.
NEVADA BAR# 10187
PIROOZI LAW GROUP, PLLC.
509 SOUTH SIXTH STREET
LAS VEGAS, NV 89101
TEL: (702) 260-1010
FAX: (702) 364-2010
EMAIL: apiroozi@piroozilawgroup.com
Attorney for Appellant, Ignacio Avila, Jr.

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

IGNACIO AVILA, JR.,)	Case No.: D-15-515892-C
Plaintiff,)	Supreme Court No.: 77242
vs.)	
)	Dept No.: L
ROSIE ELENA MARTINEZ,)	
)	CASE APPEAL STATEMENT
Defendant.)	

1. Name of appellant filing this case appeal statement:

Petitioner, Ignacio Avila, Jr.

2. Judge issuing the decision, judgment, or order appealed from:

The Honorable Jennifer L. Elliot and The Honorable Gerald W. Hardcastle;
Eighth Judicial District Court, Clark County.

3. Counsel for Appellant:

Party: Petitioner, Ignacio Avila, Jr.

Counsel:	Arezou H. Piroozi, Esq.	Telephone (702) 260-1010
	PIROOZI LAW GROUP, PLLC.	Facsimile (702) 364-2010
	509 South 6 th Street	Email apiroozi@piroozilawgroup.com
	Las Vegas, NV 89101	

1 **4. Identify each respondent and the name and address of appellate**
2 **counsel, if known, for each respondent (if the name of a respondent's**
3 **appellate counsel is unknown, indicate as much and provide the name and**
4 **address of that respondent's trial counsel):**

5
6 **Party: Respondent, Rosie Martinez**

7 **Counsel: Rosie Elena Martinez**
8 In proper person
9 5729 Awakening Street
10 North Las Vegas, NV 89081

Telephone (702) 353-9271
Email rose_n_vegas@yahoo.com

11 Rosic Elena Martinez
12 In proper person
13 5005 Losee Road, Apt 3019
14 North Las Vegas, NV 89081

Telephone (702) 353-9271
Email rose_n_vegas@yahoo.com

15 The Parties were not granted Trial in this case therefore, no trial counsel
16 can be listed for Respondent. Undersigned counsel does not know if respondent
17 will retain appellate counsel.

18 **Party: Third Party Respondent, Henry Oliva**

19 **Counsel** Steven L. Yarmy, Esq.
20 Steven Yarmy Law
21 7454 West Sahara Avenue
22 Las Vegas, NV 89117

Telephone (702) 586-2513
Facsimile (702) 586-3690
Email sly@stevenyarmylaw.com

23 Henry Oliva
24 5729 Awakening Street
25 North Las Vegas, NV 89081

Telephone (702) 470-7634

26 The Parties were not granted Trial in this case therefore, no trial counsel can be
27 listed for Third Party Respondent. Mr. Yarmy is the attorney of record for third party
28

1 respondent, Henry Oliva, undersigned counsel does not know if third party respondent
2 will retain additional or separate appellate counsel.

3 **5. Indicate whether any attorney identified above in response to question 3**
4 **or 4 is not licensed to practice law in Nevada and, if so, whether the district court**
5 **granted that attorney permission to appear under SCR 42 (attach a copy of any**
6 **district court order granting such permission):**

7 Both counsel are licensed to practice law in Nevada.

8 **6. Indicate whether appellant was represented by appointed or retained**
9 **counsel in the district court:**

10 Retained.

11 **7. Indicate whether appellant is represented by appointed or retained**
12 **counsel on appeal:**

13 Retained.

14 **8. Indicate whether appellant was granted leave to proceed in forma**
15 **pauperis, and the date of entry of the district court order granting such leave:**

16 Not applicable.

17 **9. Indicate the date the proceedings commenced in the district court (e.g.,**
18 **date complaint, indictment, information, or petition was filed):**

19 November 1, 2017, First Amended Complaint for Custody.

20 **10. Provide a brief description of the nature of the action and result in the**
21 **district court, including the type of judgment or order being appealed and the**
22 **relief granted by the district court:**

23 This is an appeal from a final judgment of the district court, denying
24 Plaintiff's Verified Motion to Amend the Complaint for Custody, To Establish Joint
25 Legal and Joint Physical Custody, To Set Aside the Custody Decree, To Modify
26 Custody, For Child Support, And for Attorney s Fees and Costs, and from the Notice of
27 Entry of the Order denying Plaintiff's tolling Motion For Reconsideration; And
28

1 Judgement For an Award of Attorney's Fees entered on September 25, 2018. Said
2 motion was a tolling motion pursuant to *AA PRIMO BUILDERS, LLC v. Washington*,
3 126 Nev. Adv. Op. 53, 245 P. 3d 1190 (2010).

4
5 The issues presented on appeal are:

6
7 This case is an appeal from the findings of fact and conclusions of law from the
8 final judgment entered on June 20, 2018 and the subsequent order from the tolling
9 motion entered September 25, 2018. The Appellant has two children with the
10 Respondent, a boy, Alan, born October 18, 2011, and a girl, Jozlynn, born October 25,
11 2013. The Respondent and a third party, Henry Oliva, represented to the Appellant that
12 Alan was not his child, but rather the child of the Respondent and Henry. After Jozlynn
13 was born, the district court entered an order granting the respondent primary physical
14 custody, with the parties sharing joint legal custody. In 2018, the Appellant suspected
15 that Alan was his child, and that he had been lied to. This lie included the Appellant
16 being presented with a false DNA test. The Appellant self-administered a DNA sample,
17 and he found out that Alan was his child. The Appellant filed pleadings asking that his
18 paternity be established, and that he be granted joint custody of both children. The
19 district court denied the Appellant an evidentiary hearing, and it found that the
20 Appellant had not overcome the presumption that that third party, Henry, was the father
21 of Alan.

22 **11. Indicate whether the case has previously been the subject of an appeal**
23 **to or original writ proceeding in the Supreme Court and, if so, the caption and**
24 **Supreme Court docket number of the prior proceeding:**

25 Not applicable.

26 **12. Indicate whether this appeal involves child custody or visitation:**

27 This case involves child custody, visitation, and support.
28

1 **13. If this is a civil case, indicate whether this appeal involves the**
2 **possibility of settlement:**

3 Not applicable.

4 **DATED** this 26th day of December, 2018.

Respectfully submitted by,

5 **PIROOZI LAW GROUP, PLLC.**

6
7 /s/ AREZOU H. PIROOZI

8 **AREZOU H. PIROOZI, ESQ.**

9 NEVADA BAR# 10187

10 509 SOUTH SIXTH STREET

11 LAS VEGAS, NV 89101

12 TEL: (702) 260-1010

13 FAX: (702) 364-2010

14 EMAIL: apiroozi@piroozilawgroup.com

15 Attorney for Appellant, Ignacio
16 Avila, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of **PIROOZI LAW GROUP, PLLC.** ("the Firm"). I am over the age of eighteen (18) and not a party to the within action. I am readily familiar with the Firm's practice of collection and processing correspondence for mailing. Under the Firm's practice, mail is to be deposited with the U.S. Postal Service on the same day as stated below, with postage thereon fully prepaid.

I served the foregoing document as described as "**CASE APPEAL STATEMENT**" on this 20th day of December, 2018, to all interested parties as follows:

☒ **BY MAIL:** Pursuant to NRCP 5(b), I placed a true copy thereof enclosed in a sealed envelope addressed as follows:

☒ **BY ELECTRONIC FILING:** via Court's electronic filing and service systems ("Wiznet") to all parties on the current service list.

☐ **BY FACSIMILE:** Pursuant to EDCR 7.26, I transmitted a copy of the foregoing document this date via telecopier to the facsimile number shown below;

STEVEN L. YARMY, ESQ.
7454 West Sahara Avenue
Las Vegas, Nevada 89117
Attorney for Third Party Respondent, Henry Oliva.

ROSIE MARTINEZ
5005 Losee Road, Apt 3019
North Las Vegas, Nevada 89081
Respondent.

HENRY OLIVA
5729 Awakening Street
North Las Vegas, Nevada 89081
Third Party Respondent, Henry Oliva.

ROSIE MARTINEZ
5729 Awakening Street
North Las Vegas, Nevada 89081
Third Party Respondent, Henry Oliva.


An employee of Piroozi Law Group, PLLC.

1 TRANS

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EIGHTH JUDICIAL DISTRICT COURT

6

FAMILY DIVISION

7

CLARK COUNTY, NEVADA

8

9 IGNACIO AVILA, JR.,)

CASE NO. D-15-515892-C

10 Plaintiff,)

DEPT. L

11 vs.)

APPEAL NO. 77242

12 ROSIE MARTINEZ,)

13 Defendant. _____)

14

15

16

BEFORE THE HONORABLE JENNIFER ELLIOT

17

TRANSCRIPT RE: ALL PENDING MOTIONS

18

THURSDAY, JANUARY 25, 2018

19

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25

1 APPEARANCES:

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1 LAS VEGAS, NEVADA

THURSDAY, JANUARY 25, 2018

2 P R O C E E D I N G S

3 (THE PROCEEDING BEGAN AT 09:33:03.)

4 THE COURT: Okay, I'm gonna call the case and talk with
5 everybody a little bit.

6 Good Morning, this is Case D-515892 Avila versus
7 Martinez with the request at Oliva or - how do you say it?

8 MR. YARMY: Oliva.

9 THE COURT: Oliva as a necessary party Counsel kindly
10 give your appearances for the record.

11 MS. PIROOZI: Good Morning, Your Honor, Arezou Piroozi,
12 bar number 10187 on behalf of the Plaintiff . .

13 THE COURT: Good Morning

14 MS. PIROOZI: . . Ignacio Avila who is present.

15 MS. VEIGA: Soraya Veiga, bar number 7944 appearing in an
16 unbundled capacity for the Defendant, Rosie Elena Martinez,
17 who is present, Your Honor.

18 THE COURT: Welcome.

19 MR. YARMY: Steven Yarmy, bar number 8733. I'm here for
20 Henry Oliva who is present because there is a Motion to add
21 him as an indispensable party basically.

22 THE COURT: Unbundled, okay.

23 MR. YARMY: Unbundled, Your Honor.

24 THE COURT: Good Morning, welcome. All parties please
25 raise your right hand, Madam Clerk will swear you in and then

1 you may be seated and relax. Do we have enough chairs over
2 there, for ...

3 UNIDENTIFIED FEMALE: Yeah, (indiscernible).

4 THE COURT: Okay good

5 COURT CLERK: Sir, I'll need you to raise your hand. You,
6 and each of you do solemnly swear that the testimony you are
7 about to give in this action shall be the truth, the whole
8 truth, and nothing but the truth so help you God?

9 MR. AVILA: Yes.

10 MS. MARTINEZ: Yes.

11 MR. OLIVA: Yes.

12 THE COURT: Okay, the main thing, unless you guys have a
13 stipulation, that we're gonna do today is send both of these
14 guys out for a paternity test.

15 MS. VEIGA: That's what I was gonna come here to ask for,
16 Your Honor.

17 THE COURT: A return date I mean I can't I can't
18 accept the one that he did legally, but I believe it's
19 correct, but I - the Court has to do their own.

20 MS. PIROOZI: Okay, just so you know, he has two tests,
21 one that was - we attached from January of 2017 and one ...

22 THE COURT: I have to outsource the ...

23 MS. PIROOZI: -from July.

24 THE COURT: ... paternity tests.

25 MS. PIROOZI: That's fine.

1 THE COURT: But ...

2 MS. PIROOZI: But he would like the costs split, because

3 he's already had to pay for two tests.

4 THE COURT: Well I don't know about that...

5 MS. VEIGA: (Indiscernible)

6 THE COURT: ...because you're alleging fraud and I have

7 some questions of your client. Can you sit down please.

8 MR. AVILA: Yes.

9 THE COURT: 'Cause the record will show that on February

10 23rd of '16 they stipulated for Mom to have primary physical.

11 March 1 of '17 a Amended Decree was filed where Mom had

12 primary and Dad had alternating weekends. And Friday - he

13 also had Tuesday, Thursday noon to six. So this is the thing,

14 he had his paternity test January 20th and did not tell anybody

15 or object or, you know - all of custody was at issue during

16 that time til that Order was filed. So, really I don't have a

17 change in circumstances unless there's actual fraud where she

18 lied to him and - I need to know - Mom, did you ever tell him

19 that he's not the Dad, or you didn't know, or what - what did

20 you tell him that ...

21 MS. MARTINEZ: I didn't know (indiscernible)

22 THE COURT: 'Cause there was more than one person, right?

23 I mean did you have a reason why?

24 MS. MARTINEZ: No, I never knew - he, he told me -like you

25 knew. I'm like no I didn't know, how am I gonna know?

1 THE COURT: Okay, are you saying you did not know because
2 there was more than one amorous encounter with a male? More
3 than one male.

4 MS. MARTINEZ: No, no no, Yeah, but no, I always thought
5 it was his. Always, 'cause everybody would tell me he looks
6 like him, he looks like him, so ...

7 THE COURT: So you truly thought it was his?

8 MS. MARTINEZ: Yes, yes, 100 percent.

9 THE COURT: Okay, so then my next question is what is
10 Henry's relationship with the child, because the law has
11 evolved quite a - a - a lot with regard to paternity. A lot
12 of it's through California, but our - Pardon? Our Love case
13 kind of incorporates the California law which I think was In
14 Re: Freeman or something the marriage of In Re: Freeman. I
15 have all that information, but I just don't have it right here
16 at my fingertips.

17 Basically, California, after that case, created a
18 statute that says if the child has turned three, there is no
19 more right to a DNA test and the reason why is because if a
20 man has been acting as a child's father, the DNA is not the
21 main thing that the Court has to look at in terms of the legal
22 parent. The legal parent would be the person who has that
23 relationship. The law is very clear that stability for
24 children is what is the most important thing.

25 So, I need to know what kind of relationship Henry

1 has established, if he's established - if he's held himself
2 out, you cannot be the legal father. You can be declared the
3 bio, but you can't be the legal.

4 MS. PIROOZI: Your Honor, they both lied to my client,
5 both Henry and the Defendant. They told him there is no
6 possible way that he's the father. He is the biological
7 father, he's had a relationship too with this boy ...

8 THE COURT: I'm following the law. He could've come in a
9 long time ago ...

10 MS. PIROOZI: That's California law,

11 THE COURT: ... even before the last ...

12 MS. PIROOZI: I will appeal this.

13 THE COURT: No, no, those are the cases that Justice
14 Shearing relied on when she did the Nevada case, okay?
15 There's only one, like, Nevada case.

16 MS. PIROOZI: Well there's ...

17 THE COURT: There's not a lot of law, but it's based on
18 California law.

19 MS. PIROOZI: When there's fraud and misrepresentation ...

20 THE COURT: I'm not hearing cl ...

21 MS. PIROOZI: ... the case needs to be ...

22 THE COURT: I'm not hearing even an iota of fraud. If she
23 was having sex with more than one man and believed that that
24 was the guy, and they never did a paternity test and he didn't
25 even ask for one til January, he has to suffer those

1 years where I hardly got any, so I don't know why this is
2 happening, but we've had to research a lot around this issue
3 with several different fact patterns and this fact pattern -
4 you don't even have enough evidence for me to have a actual
5 evidentiary hearing if this man has a relationship with the
6 child.

7 MS.PIROOZI: Your Honor, they don't live together,

8 THE COURT: That doesn't matter.

9 MS.PIROOZI: They are boyfriend and girlfriend on and off.

10 MS. VEIGO: Seventeen years ...

11 MS. PIROOZI: So what's the relationship?

12 MS. VEIGO: ... they've been having - they've been
13 together for seventeen years, Your Honor. If anything ...

14 MS. PIROOZI: ... not true.

15 MS. VEIGO: ... if he had even the - he was sleeping with
16 her when supposedly if Allen

17 is his son, then he should've brought it up when he brought
18 in the complaint for Jazlynn, the second ...

19 MR. YARMY: And, Your Honor, they're avoiding one major
20 issue here, he's been the father of that child the whole time
21 ...

22 THE COURT: That's what I'm trying to find out.

23 MR. YARMY: ... regardless if they're married or not, he's
24 been holding himself out as his father, so that's really - is
25 that really relevant? Do you have to be married to be the ...

1 MR. AVILA: They always have issues.

2 MR. YARMY: ... putative father?

3 THE COURT: No, you don't.

4 MR. YARMY: So, I don't know what that's about, but from
5 my client's ...

6 THE COURT: He's not the putative, he's the legal, he's on
7 the birth certificate.

8 MR. YARMY: ... standpoint, yes, and the legal. So if -
9 if it became ...

10 THE COURT: There's a statute that deals with this...

11 MR. YARMY: You're correct, Your Honor ...

12 MS. PIROOZI: They're not married though.

13 MR. YARMY: ... thank you for correcting me. But he's the
14 father of the child and that child calls him Dad.

15 THE COURT: Okay well.

16 MS. PIROOZI: Your Honor, they've had an on and off again
17 relationship, they don't live together.

18 MS. VEIGO: Doesn't matter.

19 MR. YARMY: Doesn't matter.

20 MS. PIROOZI: My client is the father ...

21 THE COURT: Most cases are just like that. Most of the
22 cases are ...

23 MR. YARMY: That's my point, it doesn't matter.

24 THE COURT: Most of the cases are they don't live
25 together, and the, you know, the person has...

1 MS. PIROOZI: He's not been allowed...
2 THE COURT: ... visitation over time...
3 MS. PIROOZI: ... to have a relationship...
4 THE COURT: Pardon?
5 MS. PIROOZI: ... with his son, and it's his son.
6 THE COURT: I get that.
7 MS. PIROOZI: It's like the daughter is his daughter...
8 THE COURT: He can develop a meaningful relationship
9 because of my understanding from the pleadings he has been
10 starting to have time. That doesn't mean that he can't have a
11 meaningful relationship built, but he can't be the legal
12 father anymore because after age three, it doesn't matter, bio
13 and DNA is not the way we decide.
14 MS. VEIGO: But why send them ...
15 MS. PIROOZI: There's no way...
16 MS. VEIGO: Then why send them out to a DNA test ...
17 MS. PIROOZI: I need to look the law up because, you know
18 what...
19 THE COURT: I'm gonna give you ...
20 MR. PIROOZI: Your Honor, there - there - that cannot be
21 possible, because if somebody hasn't known about a child and
22 all of a sudden paternity is done and ...
23 THE COURT: What do you mean he hasn't known about the
24 child? He's, he's...
25 MR. PIROOZI: They've all said that it's his father - that

1 it's his child.

2 THE COURT: That's not knowing, that's being told I was
3 having sex with you, I was having sex with you, I think this
4 is his child and this one's your child. So that's what she
5 thought. What is the proof of fraud here? Fraud is a tough
6 gig to meet, okay. I don't know how you're even gonna get
7 there.

8 MS. PIROOZI: Let's go for a misrepresentation because
9 there is lies ...

10 THE COURT: There's no ...

11 MS. PIROOZI: ... outright lies made to my client.

12 MR. YARMY: (Indiscernible)

13 MS. VEIGO: Your Honor, then why send them out to a DNA
14 test?

15 THE COURT: You could've filed a Motion any time, this
16 child is...

17 MS. PIROOZI: Your Honor, he had an attorney and the
18 attorney he felt didn't act - appropriately represent him,
19 that attorney was aware of the test. I'm letting you know I
20 came on as soon as he came to me and I filed everything I
21 needed to file.

22 MS. VEIGO: And I had a question on what she filed. She
23 filed a Motion to Amend the Complaint and then she filed the
24 Complaint then gets a Default which is procedurally incorrect.
25 She had to argue the Motion to Amend the Complaint and once

1 you grant her a motion to amend the Complaint, then you file
2 the Complaint so you can answer.

3 MS. PIROOZI: She just, yeah, I - I

4 MS. VEIGO: You don't do them together.

5 MS. PIROOZI: Nobody actually responded to anything even
6 though Defendant was served, not ...

7 THE COURT: This happened when I was gone for over two
8 months.

9 MR. YARMY: It's actually correcting the process ...

10 THE COURT: This happened when I was ...

11 MR. PIROOZI: Nobody answered the Complaint and nobody
12 opposed the Motion...

13 MR. YARMY: Nobody answered so ...

14 MS. PIROOZI: ... I filed Defaults ..

15 MR. YARMY: ... she's hilarious ...

16 MS. PIROOZI: ... and they've been accepted, so, that's
17 where we are.

18 MS. VEIGO: Incorrectly accepted the Default.

19 MS. PIROOZI: An Affidavit of Service has been filed, Your
20 Honor ...

21 THE COURT: We will not be doing anything with the Default
22 except for striking it because the policy...

23 MS. PIROOZI: Okay, well, I had to...

24 THE COURT: ... of the law is always to litigate ..

25 MS. PIROOZI: ... do that.

1 THE COURT: ... things on the merits if people are here.
2 Everyone's here with counsel.

3 MS. PIROOZI: Right.

4 THE COURT: So, what I would - what I would suggest, I'm
5 trying to find something I can print that's not tied to
6 another case that's - 'cause these paternity cases are sealed,
7 so I can't just give you all the law unless I remove all the
8 names. What I'm trying ...

9 MS. PIROOZI: I would like a chance to brief this issue
10 because if this is the case, I mean, I'm gonna appeal it
11 because there's no way.

12 THE COURT: It would have been good for you to research
13 before you came in, I don't think you would have...

14 MS. PIROOZI: I did research it...

15 THE COURT: ... given him the advice that you gave him.

16 MS. PIROOZI: I did research it, Your Honor, it's my due
17 diligence to do that.

18 THE COURT: Let me just - I'm just gonna call 'cause I
19 can't find it for some reason.

20 Hey, can you do me a favor, 'cause counsel for Dad
21 has - does - is not aware of what's happening with paternity
22 law and the DNA testing and stuff and apparently in this
23 matter, Avila Martinez, Mr. Oliva, he has counsel here and
24 he's been holding himself out as the child's Dad, according to
25 their side of the story. So I need some, I need a printout of

1 - remember that Memo that was done - I cannot find it on my
2 computer, but I need something and I need it to be - have any
3 identity removed from, I mean those Memos are like two or
4 three pages I think. I sent it to you by email and I thought
5 I saved it with my Decisions and I, I cannot find it, I don't
6 know why. Okay thanks, bye.

7 All right, he's gonna bring all that down.

8 MS. VEIGO: I'd like to have a copy of it too, Your Honor.

9 THE COURT: Oh yeah, we'll make a copy for all you guys.
10 There's quite a bit of case law, I actually went on Westlaw
11 because I had - I was looking for my files from my first term
12 and the last time I had this really big issue was in - between
13 2002 and '08 and all of a sudden there's all these cases that
14 people want DNA tests and the kids are 10 and 12 and, you
15 know, some of them know Dad has been around, so if they
16 stipulate then I'm fine doing a paternity test. I am gonna
17 send you guys for paternity tests and there's no reason why,
18 even if Henry is declared the legal father, why Dad can't also
19 have a father relationship with the child. I mean, there are
20 a lot of blended families out there these days with more than
21 two Dads.

22 MR. AVILA: Your Honor, I'm not like ...

23 MS. PIROOZI: Stand up.

24 MR. AVILA: I'm sorry. I'm not denying anything, I just
25 wanted to see my son and my daughter more. The reason why I

1 did a settlement last time is because I didn't wanna go to
2 trial and I didn't have enough money either, but I just wanted
3 - I was seeing my daughter at that time I was seeing her more,
4 almost every day. She never had a good relationship with
5 Henry, nothing, nothing - I'm not saying nothing bad about
6 him, but all I want is just to see my son and my daughter as
7 much time as I can, at least 50 / 50 or more because I have
8 the time for it. I always ask her can I see 'em and it ...

9 THE COURT: There's no - there's not - there's not a
10 change in circumstances because basically the last Decree was
11 filed after you knew this and you're telling me you
12 intentionally decided not to do anything or didn't want to
13 litigate, so you thought about it and said no I'm not gonna do
14 that right now. So there's not a change, but I can send you
15 guys to mediation to work out something. I think that you
16 should be able to have Allen and Jazlynn, you know, on a
17 regular basis together because you are their biological
18 parent, but this man, if he's got a relationship with this
19 child and this child calls this guy Dad, I mean, that is a
20 huge thing. Holding yourself out is really the main thing
21 that - and that's also codified - bottom line, the child is
22 too old, unless there is clear and convincing evidence of
23 fraud.

24 MR. PIROOZI: Your Honor, the Constitution protects his
25 right to parent his children and that law trumps all of this

1 law. So if it's a constitutional issue for him to be able to
2 ...

3 THE COURT: It would be good if you read the law first
4 before you make all these comments on the record because
5 you're not correct about this, okay? This is law that's in
6 the favor of children and their stability and maintaining
7 familiar relationships, especially when those are created when
8 kids are very young and bonding and trying to learn to trust
9 about relationships.

10 MS. PIROOZI: Your Honor, they're not married, they don't
11 live together...

12 THE COURT: But that is nothing to do with this and...

13 MS. PIROOZI: ... has held himself...

14 THE COURT: ... most of the cases are just people who are
15 not married, okay? You just need to get on Westlaw and read
16 it, but I'm gonna give you a lot of ...

17 MS. PIROOZI: ... (indiscernible) perception that he's
18 their father...

19 MS. VEIGO: ... I want to let the Court know that there's
20 also a ten year old son she has with him...

21 MS. MARTINEZ: ... yes...

22 MS. VEIGO: ... very attached to Allen, the six year
23 old ..

24 MS. MARTINEZ: ... Mm-hm.

25 MS. VEIGO: ... I mean if you look...

1 THE COURT: What's that child's name and birth date?

2 MS. MARTINEZ: Henry Oliva, Jr. His birthday's 11/22/2007.

3 MS. VEIGO: So if he has to be taken into consideration,
4 we want to extend all this time that he wants now, you are
5 pulling away both kids from their brother and they have a very
6 ...

7 THE COURT: They have to think about all these things
8 when they try to mediate something..

9 MS. VEIGO: Right, I just wanted to ...

10 THE COURT: I'm just trying to make it clear, I'm just
11 blown that I can't find this, that, that, that the law is
12 really pretty strong relative to this issue and it - actually
13 our changes in our guardianship laws also go in this
14 direction, will you be saying it runs afoul of Granville
15 versus Troxel or Troxel versus Granville, I can't remember.
16 Bottom line, now when you're in a guardianship, guess what, if
17 you're the parent who loses the legal rights temporarily,
18 let's say you did not consent, you fought this, you objected
19 and it was still granted. To get your child back, you not
20 only have to prove that you've restored yourself to
21 suitability, you have to prove that, that you're going to be
22 enhancing the child. Let's see...

23 MS. PIROOZI: Your Honor, we had this very case in front
24 of you with Mr. Hofflin (ph) which is on appeal with the
25 Supreme Court, you made three decisions on this in my favor

1 with this very issue that you're discussing right now,
2 guardianship...

3 THE COURT: I'm just saying its typical in the law, I'm
4 not saying this is related. What I'm saying is ...

5 MS. PIROOZI: Right.

6 THE COURT: ... it's related to people coming in and
7 saying Wow, what's going on, you know, my parental rights have
8 been taken and, if you didn't consent under AB 319, you have
9 to show, not only that all those things that were wrong were
10 corrected, but that the welfare of the protected minor will be
11 substantially enhanced by termination of the guardianship. Do
12 you know how hard that is, the burden is not preponderance,
13 it's clear and convincing...

14 MS. PIROOZI: And convincing, yes.

15 THE COURT: ... So, not only do you have to prove that you
16 were - that you're not the problem that you were before, but
17 that you're better for this child, that you can enhance the
18 welfare over the person that's been taking care of the child
19 because these laws have been made in favor of minor children,
20 not parents.

21 MS. PIROOZI: I understand that, that's guardianship and
22 we're talking about somebody who's not married to somebody
23 else, who's ...

24 THE COURT: You're talking about things that don't even
25 matter, you're talking - these things don't matter. You're

1 arguing facts that don't matter. You need to ...

2 MS. PIROOZI: Those are the facts in this case.

3 MS. VEIGA: Your Honor, ...

4 THE COURT: It's unrelated to the issue of the legal - of
5 the legal father, married or not, I mean - there is statutory
6 law that says if they got married after the child was born
7 then that's another fact that goes in their favor, but
8 honestly, there doesn't have to be any marriage for that ...

9 MS. PIROOZI: The thing, Your Honor,...

10 THE COURT: ... for the same policy to stand.

11 MS. PIROOZI: ... is that there is a presumption when the
12 parties are married that if he - if the child - that the child
13 is his, it's a rebuttable presumption, rebuttable by DNA and
14 DNA in this case rebuts that, that's even - if they're married
15 - in this case they're not even married, they don't even live
16 together...

17 MS. VEIGA: Your Honor, they have been living together for
18 seventeen years for a very short time they separated...

19 THE COURT: I don't even care about that...

20 MS. VEIGA: ... a few months or something like that...

21 THE COURT: If he's kept the relations - that isn't even
22 - I mean it would add to, you know, the fact that they're
23 acting as a family, but if he's been holding himself out as a
24 Dad living in a separate apartment in another town or city, it
25 still applies. I just wish I - I don't know...

1 MS. PIROOZI: Is he paying child support? I mean, if they
2 don't live together and all this kinda stuff. If he's holding
3 himself out to be the father...

4 THE COURT: Do you have an arrangement for that, or are
5 you guys together?

6 MR. YARMY: He's living with the child, why would he pay
7 child support?

8 MS. PIROOZI: They don't live together, you guys have both
9 told me that.

10 MS. VEIGA: I didn't say that...

11 MS. PIROOZI: So he lives with the child and she lives in
12 another place?

13 MR. YARMY: He did not represent that to me, he's
14 representing that he lives with his child and he can stand up
15 before the Court and tell her if that's different or not.
16 You're under oath.

17 MR. OLIVA: Yes, the children reside with me the majority
18 of the time, they sleep, they have their own room, they live
19 with me. As for her, she also stays the majority of the time
20 with me throughout this time.

21 THE COURT: So you each have your own place but you have a
22 romantic relationship and you're maintaining like a family
23 that's in two houses...

24 MS. VEIGA: Correct, she rented an apartment, I think it
25 was about a year ago, right?

1 MS. MARTINEZ: Ten months ago.

2 MS. VEIGA: Ten months ago.

3 MS. PIROOZI: It's an on and off again relationship.

4 MS. VEIGA: It's just around the corner from his house...

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6 THE COURT: I think I might have found that, its in my
7 email.

8 MS. PIROOZI: We'd agree to the DNA test, Your Honor, we
9 don't have a problem with that, we've already submitted one
10 and he is going to be the father and, you know, whatever
11 decision you make on this, I'd like it in writing please.

12 THE COURT: Okay, under N.R.S. 440.610 the birth
13 certificate's prima facie evidence, okay? Data pertaining to
14 the father of a child is such evidence that the alleged father
15 is or becomes the husband of the Mother in a legal marriage.
16 That's a statutory thing. Another statute that applies is
17 126.051 Presumptions of Paternity. Subsection 1 (d) is the
18 man is presumed to be the natural father of a child if, while
19 the child is under the age of majority he receives the child
20 into his home and openly holds out the child as his natural
21 child. Our case that incorporates the California law is Love
22 versus Love, and that's a 1998 case, it has not been overruled
23 and it states: under the statutory scheme for determining
24 paternity, the District Court is not compelled to determine on
25 the basis of DNA tests that a man is or is not a child's

1 father as a matter of law, citing N.R.S. 126.051.121 and the
2 citation for Love is, if you want Nevada's books, is 114 p
3 572. Now this is what that case was based on. Shearing
4 grabbed this law from California and put it into her Decision.
5 "The Legislature has made it clear that although it's now
6 possible to determine biological paternity with certainty
7 biology is not the predominant consideration in determining
8 parental responsibility once a child has reached his or her
9 third year of life." That is In Re: Marriage of Freeman and
10 there's another case In Re: Marriage of B. and those are, do
11 you want - I have the California Reporter In Re: Marriage of
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13 Freeman is 45 Cal. App. 4th 1437, page 1437. Now here's some
14 more law. "The State has an interest in preserving and
15 protecting the development - the developed parent, child and
16 sibling relationships which give young children social and
17 emotional strength and stability. This interest is served in
18 spite of notwithstanding, termination of the Mother's marital
19 relationship with the presumed father", that's one aspect,
20 however, there are a bunch of estoppel cases out there too and
21 as estoppel cases demonstrate, although impotent or sterile
22 men may not be subject to the presumption, they may still be
23 required to support children they have treated as their own,
24 so I mean this has been challenged in so many ways. Indeed,
25 by way of estoppel theory, impotent and sterile men are

1 subjected to paternal responsibility on the substantially the
2 same basis that we're employing, basically in applying the
3 statutory presumption, the nature and duration of the
4 relationships with their putative children.

5 Paternity distinction based on nature of a presumed
6 father's relationship with presumed child are valid, thus the
7 face of the statute does not create the disparate treatment
8 which would raise substantial equal protection concerns.
9 Biology will only control a determination of parental
10 responsibility for a limited period early in a child's life
11 and thereafter the predominant consideration must be the
12 nature of the presumed father's social relationship with the
13 child. Then they created statute. California law, 1980 the
14 Legislature added what is now section 7541 providing for
15 rebuttal of the presumption by blood testing requested within
16 two years following a child's birth at age 3. After two years
17 absent clear and convincing evidence of fraud basically or,
18 you know, a material mistake of fact where you were mislead
19 and had no, you know, way to correct that, in an early time of
20 the child's life, a request for paternity test may be denied.

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

1 developed a relationship with the child that should not be
2 lightly dissolved and upon which liability for continued
3 responsibility to the child might be predicated. This social
4 relationship is much more important to that child at least
5 than a biological relationship of actual paternity. Then
6 there's also cases on claim preclusion which is a defense, it
7 prevents relitigating, you know, previously resolved issues
8 and that can also apply as to paternity and other valid
9 judgments to protect the finality of decisions, you know, that
10 are disrupting kids' lives.

11 One of the cases that is cited within the claim
12 preclusion is the Willerton versus Basham, 111 Nevada page 10
13 Basically, I'm not going to go into that, but there's a lot of
14 stuff about guys saying, you know, it's unfair that I'm
15 obligated to support someone else's child, however, there's a
16 balance between that policy interest and the claims preclusion
17 policy of protecting the finality of judgments as it carves
18 out an exception to claim preclusion for previous judgments
19 that were obtained by extrinsic fraud. It's the same idea, but
20 it doesn't apply in this case through claim preclusion,
21 although because his name's on the birth certificate, he is
22 the prima facie - that's prima facie evidence of parentage.

23 And then I think - so it's the whole idea - is
24 security and support, maintaining the known family structure,
25 may include detachment and bond they've developed as family

1 members which is deemed more compelling than biology. When a
2 man has been standing in the role as a child's father holding
3 the child out as his own, and they have developed an identity
4 as parent and child and as a family. So, unless I hear clear
5 and convincing evidence of fraud, which I do not, then this is
6 the law, the law of the land.

7 MS. PIROOZI: Your Honor, I just ask for a written
8 decision then. Because...

9 THE COURT: You can write one from what I just put on the
10 record and I'll certify the question and they'll say did you
11 read Love? Seriously.

12 MS. PIROOZI: I've never written a Decision from a Judge
13 before.

14 THE COURT: No, it's you - you're appealing an Order and I
15 put all the law on the record. Basically, you've not been
16 able to tell me one thing that shows there's clear and
17 convincing evidence of fraud and he already admitted that he
18 knew about this in January prior to the March Decree being
19 filed. He didn't wanna deal with it, so basically, he is the
20 perfect example of someone that is not going to be able to
21 come and challenge it. But I'm not saying he doesn't have the
22 right to develop that relationship with his child. I can't
23 find that he's the legal father because I'm sitting here
24 completely chained, unless there's a stipulation, to statutes
25 and case law, the least power I've ever had in my life, okay.

1 and go I wanna do it now, the child is the one that they're
2 looking through their eyes, what is it - how is it effecting
3 the child?

4 MS. PIROOZI: Right and you need to do what's in the best
5 interest of the child, the child has ...

6 THE COURT: Best interest is always important to me...

7 MS. PIROOZI: My, my...

8 THE COURT: ... of course, that's the bottom line always,
9 but the law says that it's in the best interest of the child
10 after, you know, a short time when they're young, basically
11 you cannot - I can deny paternity.

12 MS. PIROOZI: This is a travesty of justice, Your Honor
13 ...

14 MR. YARMY: Your Honor, that's what I was gonna ask you to
15 do today. I don't see any reason to ...

16 MS. PIROOZI: ...my client has been robbed of his right to
17 be a father for six years...

18 MR. YARMY: ... have to ...

19 THE COURT: No, he hasn't been robbed, he admitted in the
20 record that he knew about this in January prior and decided
21 not to litigate. .

22 MS. PIROOZI: ... and he had an attorney - and he had an
23 attorney at the time who did nothing.

24 THE COURT: Do the Order from today. You can listen to
25 the tape, write what I put on the record and - write exactly

1 what I put on the record and I'll certify the question for the
2 Supreme Court, I think it'll come down really fast.

3 MR. YARMY: Your Honor, may I add one thing? I mean - I
4 know you discussed ordering a paternity test, but after
5 everything you said here, I mean - I would ask that you don't
6 do that.

7 THE COURT: I thought they were stipulating to a test...

8 MR. YARMY: No, we're not stipulating to it...

9 MS. PIROOZI: No and I asked you, Your Honor.

10 MR. YARMY: It's irrelevant and intrusive and we don't
11 agree to it.

12 MR. PIROOZI: Intrusive in what way? Two tests have
13 already been done and he's been confirmed ...

14 MR. YARMY: It's intrusive upon the child to keep doing
15 something like that to a child and confuse the child, if
16 you're listening to the Judge, you would know this.

17 MS. PIROOZI: There is no confusion.

18 MR. YARMY: If you had anything in ...

19 MS. PIROOZI: ... he's the father...

20 MR. YARMY: ...life you like you would know this.

21 MS. PIROOZI: Excuse me.

22 MR. YARMY: I know this from practical experience that
23 when you're with a child and that child's loving you, blood
24 don't matter.

25 MS. PIROOZI: Okay, I'm a mother too...

1 MS. PIROOZI: Is he paying child support? I mean, if they
2 don't live together and all this kinda stuff. If he's holding
3 himself out to be the father...

4 THE COURT: Do you have an arrangement for that, or are
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22 right to develop that relationship with his child. I can't
23 find that he's the legal father because I'm sitting here
24 completely chained, unless there's a stipulation, to statutes
25 and case law, the least power I've ever had in my life, okay.

1 You guys can be creative, I have to follow our law, our
2 statutory and case law is not in his favor and if you would
3 have read it, you would have known that.

4 MS. PIROOZI: I have read it, that's the thing, I mean
5 when there is ...

6 THE COURT: You were disagreeing with everything I said
7 and I just read from case law, several of them. You said the
8 Constitution overrides that, no it doesn't. That is what I
9 just read, okay?

10 MS. PIROOZI: Okay, well I don't know how you're saying
11 the Constitution doesn't override case law 'cause that's

12 THE COURT: The equal protection is - I mean honestly -
13 it's already been determined that it does not apply and so if
14 you wanna find some new case law that's gonna ...

15 MS. PIROOZI: (Indiscernible)

16 THE COURT: ... override the fraud aspect of this, which
17 is pretty much a national, consistent, you know, way of
18 looking at it because of the interest and needs of the kids,
19 people cannot just sit on their rights like this when kids are
20 developing, there's so much testimony in these older cases
21 about developmental needs of kids and why this should not
22 happen because they are depending on you and they are bonding
23 with their care giver. That is another reason why
24 guardianship law changed and made it harder, because if a
25 person isn't stepping up, they don't just get to come in later

1 and go I wanna do it now, the child is the one that they're
2 looking through their eyes, what is it - how is it effecting
3 the child?

4 MS. PIROOZI: Right and you need to do what's in the best
5 interest of the child, the child has ...

6 THE COURT: Best interest is always important to me...

7 MS. PIROOZI: My, my...

8 THE COURT: ... of course, that's the bottom line always,
9 but the law says that it's in the best interest of the child
10 after, you know, a short time when they're young, basically
11 you cannot - I can deny paternity.

12 MS. PIROOZI: This is a travesty of justice, Your Honor
13 ...

14 MR. YARMY: Your Honor, that's what I was gonna ask you to
15 do today. I don't see any reason to ...

16 MS. PIROOZI: ...my client has been robbed of his right to
17 be a father for six years...

18 MR. YARMY: ... have to ...

19 THE COURT: No, he hasn't been robbed, he admitted in the
20 record that he knew about this in January prior and decided
21 not to litigate. .

22 MS. PIROOZI: ... and he had an attorney - and he had an
23 attorney at the time who did nothing.

24 THE COURT: Do the Order from today. You can listen to
25 the tape, write what I put on the record and - write exactly

1 what I put on the record and I'll certify the question for the
2 Supreme Court, I think it'll come down really fast.

3 MR. YARMY: Your Honor, may I add one thing? I mean - I
4 know you discussed ordering a paternity test, but after
5 everything you said here, I mean - I would ask that you don't
6 do that.

7 THE COURT: I thought they were stipulating to a test...

8 MR. YARMY: No, we're not stipulating to it...

9 MS. PIROOZI: No and I asked you, Your Honor.

10 MR. YARMY: It's irrelevant and intrusive and we don't
11 agree to it.

12 MR. PIROOZI: Intrusive in what way? Two tests have
13 already been done and he's been confirmed ...

14 MR. YARMY: It's intrusive upon the child to keep doing
15 something like that to a child and confuse the child, if
16 you're listening to the Judge, you would know this.

17 MS. PIROOZI: There is no confusion.

18 MR. YARMY: If you had anything in ...

19 MS. PIROOZI: ... he's the father...

20 MR. YARMY: ...life you like you would know this.

21 MS. PIROOZI: Excuse me.

22 MR. YARMY: I know this from practical experience that
23 when you're with a child and that child's loving you, blood
24 don't matter.

25 MS. PIROOZI: Okay, I'm a mother too...

1 MR. YARMY: That's what the Judge is trying to tell you...
2 MS. PIROOZI: ... I don't know why you're going crazy...
3 MR. YARMY: ... and you're arguing with her twenty times.
4 And we can get on with this. We don't want a paternity test,
5 Your Honor...
6 MS. PIROOZI: He is the father, he is the biological
7 Father of both of these children and he deserves his rights.
8 THE COURT: Somehow the information that I've said to you
9 is not registering.
10 MS. PIROOZI: It's registering.
11 THE COURT: You keep saying the words biological
12 father...
13 MS. PIROOZI: I'm gonna ...
14 THE COURT: ... I just read to you from many cases going
15 back into the nineties that say...
16 MS. PIROOZI: You said he's the legal father, my client is
17 the biological father, you can't change that fact, he is the
18 biological father...
19 MS. VEIGA: Yeah but there's case law that says that you
20 don't even...
21 MS. PIROOZI: DNA doesn't change it...
22 MS. VEIGA: ... have to get a DNA test if the child's over
23 three years old.
24 THE COURT: It says I can deny it.
25 MR. YARMY: We're asking no DNA test.

1 THE COURT: I thought you guys were stipulating to it,
2 that's why.

3 MS. PIROOZI: We did stipulate to that and they just
4 changed their minds.

5 MR. YARMY: Sorry, Your Honor...

6 THE COURT: But I can send you guys to mediation and I
7 think it's important that the child have as many loving care
8 givers as possible. I mean, kids have enough room in their
9 heart for as many nurturing adults, basically - I mean...

10 MS. PIROOZI: None of these people wanting the Father of
11 one of the children to be involved in the fath - the life of
12 the other child, they're pushing him away. That makes no damn
13 sense. That is not in the best interests of the child.

14 MR. YARMY: See, Your Honor...

15 THE COURT: I think I just - when I heard them say - the
16 only thing I heard 'em say about visitation is they're open to
17 talking about it...

18 MS. PIROOZI: (Indiscernible)

19 THE COURT: ... but they also don't wanna disrupt the
20 sibling relationship...

21 MS. VEIGA: Correct, correct...

22 THE COURT: They wanna - whatever it's gonna be, they want
23 to make it ...

24 MS. PIROOZI: And the other child is his child, so...

25 MR. YARMY: If he keeps ...

1 THE COURT: And the one's his, so there's two ...

2 MS. PIROOZI: ... they're keeping him away...

3 THE COURT: ... that are his.

4 MR. YARMY: Your Honor, even in their pleadings they said
5 that they would let the other child go with the other child to
6 visit the sibling - they're saying ...

7 MS. PIROOZI: They're keeping him away - they're keeping
8 him away.

9 MR. AVILA: Your Honor, but this is the thing, Your Honor,
10 I received a fake DNA and I asked him...

11 THE COURT: You're under oath right now and ...

12 MS. PIROOZI: He did, he really did.

13 THE COURT: ... earlier in your pleadings you said that
14 you have now been getting visitation with the child and now
15 you're saying they're keeping the child away...

16 MR. AVILA: Yes they are, Your Honor...

17 MS. MARTINEZ: No...

18 THE COURT: I want him to talk.

19 MR. AVILA: Yes, like they don't - they don't...

20 THE COURT: What's the truth? 'Cause you either lied in
21 your pleading or you're lying now. Which one is it? They're
22 keeping you away or you are getting ...

23 MS. PIROOZI: Talk about getting the child separately.

24 MR. AVILA: The - when I want to see him and I have the
25 time for him, they don't let me see him, they make excuses, I

1 I mean I have everything on text messages.

2 THE COURT: Okay, I'll read from your pleading I guess
3 because - I mean, it's these pleadings ...

4 MR. AVILA: They are keeping him away from me.

5 THE COURT: ... Rule 11 applies to these pleadings whether
6 a lawyer writes them or the party writes them. Does anybody
7 have in front of them where that appeared, I know it's in
8 there?

9 MS. VEIGA: I read it too, I'll look for it.

10 THE COURT: It's like - it's kinda like well it doesn't
11 really matter now 'cause I'm getting visitation, but I want to
12 be, you know, get my paternity test - or get my declaration
13

14 MS. PIROOZI: He's not getting visitation, we never said
15 he was getting visitation ...

16 MS. VEIGA: Yes you did, it's on the ...

17 MR. YARMY: It's in there, I read it.

18 MS. VEIGA: I'm gonna look for it, Your Honor, hold on.

19 MR. YARMY: That they were letting both of the child - him
20 see the two child's at one time and that was his basis for not
21 fighting the original custody that he got because he didn't
22 want to split the family apart, which is actually defeated by
23 the fact that there's another child that would've been the
24 same reasoning anyway, so I don't know where they're coming
25 from, Your Honor.

1 THE COURT: I'm trying to find where it says...

2 MS. PIROOZI: This motion was filed in November, Your
3 Honor, so it's been a few months and in the few months that
4 this case has been pending before we've come to this Court, he
5 has not been allowed to see his son.

6 MS. MARTINEZ: Oh my God, that's not true, I have text
7 messages...

8 MS. PIROOZI: My client texts her every week to ask...

9 THE COURT: Here it is, page 10 - it's on page 10, page 10
10 on lines - it's in the paragraph lines 10 through 19.

11 MS. PIROOZI: Which Motion is this?

12 THE COURT: It's your actual Verified Motion to Amend the
13 Complaint filed November 1 and it says in the middle...

14 MS. VEIGA: It says Rosie did allow Ignacio to take both
15 children on many occasions...

16 MR. YARMY: That's what I was alluding to ...

17 MS. PIROOZI: Do what?

18 MS. VEIGA: ... however, Rosie did not have to pay for a
19 sitter and I had the benefit of keeping the children together,
20 it was not done to make sure Ignacio would maintain a proper
21 relationship with the children.

22 THE COURT: She thought that was the Dad...

23 MR. YARMY: ... They contradict themselves about keeping
24 the child away from him when they're stating that they were
25 even allowing the other child to see him.

1 MS. PIROOZI: Okay, it's been three months since we filed
2 this Motion. We're talking about since ...

3 MR. YARMY: You should've supplemented it...

4 MS. PIROOZI: ... filing the Motion.

5 THE COURT: Can I have a Mediation Order?

6 MS. PIROOZI: He's not letting him see him.

7 THE COURT: I'm - I'm adding Henry to the case 'cause he's
8 a necessary party, but I-I don't believe that I've heard any
9 evidence of fraud whatsoever, so I'm not gonna grant an
10 evidentiary hearing or paternity test without - without a
11 stipulation.

12 MS. PIROOZI: The fraud, Your Honor, is that my client was
13 text messaged a fake DNA test that Henry Oliva did and we - he
14 was - he received a fake text message ...

15 THE COURT: When was that?

16 MS. PIROOZI: He was trying ...

17 MR. AVILA: I...

18 MS. PIROOZI: Stand up please and talk about this.

19 THE COURT: When was that?

20 MR. AVILA: It was last year, Your Honor, the year 2016
21 when I was going through my daughter's case and it was done
22 with - I was asking some questions ...

23 THE COURT: Why didn't you ask for a paternity test on
24 that child at that time?

25 MR. AVILA: I did. I asked Henry and I did ask Rosie too,

1 but they said no, he's not yours, I would've told you.
2 THE COURT: Is that true?
3 MR. AVILA: Verbally, but then ...
4 THE COURT: If you did that, that's fraud and we'll be
5 having a chat.
6 MR. AVILA: ... See and I had it, I had that, Your Honor,
7 in a text message ...
8 THE COURT: If you actually gave him a false DNA test.
9 MS. VEIGA: Yeah, but he took one in January, he did a
10 DNA...
11 MR. AVILA: No, no, no, no, we're talking about ...
12 THE COURT: Fraud...
13 MR. AVILA: ... in 20
14 THE COURT: That's fraud, that's definitely fraud. Is it
15 in a text?
16 MS. MARTINEZ: I didn't send it.
17 MS. PIROOZI: It's a text message ...
18 MR. AVILA: No, Henry ...
19 MS. PIROOZI: It was Henry's...
20 MR. AVILA: ... because Rosie was denying it, so it was a
21 back and forth where I was telling him, there was a time when
22 Henry even picked up my daughter 'cause Rosie wasn't there to
23 pick up my daughter so he showed up and I asked him - and I
24 said - I asked him and he said to me "ask her" and it was a
25 back and forth and that's why I had to find out a way because

1 I was still paying my lawyers.

2 THE COURT: Where's the evidence at? Nobody's attached
3 that.

4 MS. PIROOZI: Your Honor, he has a text message ...

5 MR. AVILA: I have a text message...

6 MS. PIROOZI: ... with a fake DNA test ...

7 THE COURT: There isn't - why don't I have a picture of it
8 attached to this Motion?

9 MR. YARMY: Yeah I would've attached that.

10 MS. PIROOZI: This needs to be a separate trial, Your
11 Honor.

12 ALL PARTIES TALKING AT ONCE

13 THE COURT: I want to see that. Pull your phone out and
14 show it to me right now. My goodness, I'm not gonna set a
15 trial that's based on his word. He's been sitting on his
16 rights ...

17 MR. YARMY: (Indiscernible)

18 THE COURT: ...for over five years.

19 MS. PIROOZI: He didn't lie, please. The one who lied is
20 the one who came up with a fake DNA test that says he's the
21 father.

22 MS. VEIGA: Okay, but if - if sh...

23 THE COURT: You waited all this - through this hearing to
24 say this now? I cannot believe that.

25 MR. YARMY: Your Honor, that's the first time I heard

1 that.

2 THE COURT: That's the only thing that you've said in this
3 case today at all or in your pleadings that is relevant.

4 MR. YARMY: Yeah, an hour later ...

5 THE COURT: That's the only way that you can get around
6 this.

7 MS. PIROOZI: Here you go. First confirm his phone number
8 because that's up there.

9 MARSHALL: What's your phone number?

10 MR. OLIVA: 702-470-7634.

11 MS. PIROOZI: Yes.

12 MR. AVILA: And the picture's right there, you can zoom it
13 in if you want.

14 THE COURT: Okay.

15 MR. AVILA: That's the DNA that I received, Your Honor.

16 MR. YARMY: Can we look at that too, please?

17 THE COURT: Yeah, just a second.

18 MS. VEIGA: And I'm gonna say he's trying to set aside the
19 Decree that she - saying she committed fraud? She didn't send
20 anything.

21 MS. PIROOZI: Well he committed fraud then and that's why
22 we joined ...

23 MS. VEIGA: But he is not ...

24 THE COURT: It doesn't say who the child is, it just
25 confirms ...

1 MR. AVILA: It says Alenn though, it doesn't say Oliva
2 though. It's him sending ...

3 THE COURT: There isn't any child's name.

4 MR. AVILA: ... it. It has a number, it has his number
5 though.

6 MS. PIROOZI: It's his number, coming from him in - in
7 response...

8 MR. AVILA: I wouldn't make it up.

9 MS. PIROOZI: ... to his request for who is the father of
10 this child? He's saying he's the father and he's sending him a
11 fake DNA test.

12 THE COURT: It doesn't say - it doesn't say that, but he
13 does imply that by sending that. But it doesn't have a
14 child's name on it.

15 MR. AVILA: It says (indiscernible) Avila on the...

16 THE COURT: And he doesn't respond.

17 MR. AVILA: ...right. It says Allen.

18 THE COURT: ...with any words.

19 MR. YARMY: Your Honor I submit that -- that that's not
20 reliable evidence.

21 MS. PIROOZI: It says Allen on there.

22 MR. AVILA: It says Allen on the right side, Your Honor.
23 That's why I knew it was a fake DNA, something that somebody
24 made it. And I wouldn't be lying about this because...

25 THE COURT: It's enough for a trial. It's enough for an

1 evidentiary hearing.

2 MS. VEIGA: Bottom line is, she's saying she committed
3 fraud. She didn't send anything. She did not commit fraud.
4 You can't set aside a decree saying she committed fraud when
5 she didn't...

6 THE COURT: That...

7 MS. VEIGA: ...send anything.

8 THE COURT: That's a good point. If it wasn't her, who
9 did it?

10 MS. VEIGA: Then how can you say (indiscernible)?

11 MR. YARMY: Not only that, Your Honor, it's after they
12 filed the original custody complaint and got an order on that.
13 And he had already knew back then he was worried, thinking
14 about it. So now he's thinking about it a year later. Now
15 he's thinking about it now. It's still too late.

16 MS. VEIGA: Bottom line, she didn't commit fraud.

17 MR. YARMY: I don't think -- I think that's...

18 MS. VEIGA: She didn't.

19 MR. YARMY: ...meaningless.

20 MS. PIROOZI: Well, she committed...

21 MS. VEIGA: And I'm gonna...

22 MS. PIROOZI: ...fraud...

23 MS. VEIGA: ...say then he sent that.

24 MS. PIROOZI: ...by saying...

25 THE COURT: I would ask for briefing on that, that

1 whether or not -- I'm -- I'm adding him as a party now. But
2 he was -- he's not considered a party, you know, for purposes
3 of what happened...

4 MS. VEIGA: Yeah, I was gonna say.

5 THE COURT: ...with regard to the fraud.

6 MS. VEIGA: Yeah, please, yeah.

7 THE COURT: Because that happened before. And so you
8 need to research it in a way that you are isolating those
9 cases that discuss whether or not where fraud is a defense if
10 another person outside of the case, may- maybe you can find
11 someone with this exact issue, commits fraud, can it be
12 imputed to the party?

13 MS. PIROOZI: Your Honor, he's the one who's on the birth
14 certificate. He just presented a fake...

15 THE COURT: Could you please say something relevant to
16 what I just said because you're just arguing over and over,
17 the same stuff, over and over. Do you understand what I said
18 the issues that I need briefed?

19 MS. VEIGA: She's...

20 MR. YARMY: Yes.

21 THE COURT: You can't bootstrap fraud to mom if she -- if
22 you don't have proof that she's, you know, inspiring him to
23 do, conspiring with him, you know, not -- no -- I mean,
24 honestly you'd have to find a way that she is complicit in
25 that fraud.

1 MS. VEIGA: Correct. And by the way...

2 THE COURT: I think. Unless there's...

3 MS. VEIGA: ...they do not. .

4 THE COURT: ...case law.

5 MS. VEIGA: ... even know if he sent that text message.

6 Oh come on we know...

7 MS. PIROOZI: He just confirmed his phone number.

8 MS. VEIGA: It doesn't mean he sent it. I can leave my

9 phone here and you can go up and text somebody

10 (indiscernible).

11 MS. PIROOZI: With a fake DNA test that has a...

12 MS. VEIGA: It doesn't have a name.

13 MS. PIROOZI: ...kid's name on it top? And it -- it

14 does. It says, Allen. And it has his name on that...

15 MS. VEIGA: I can't -- well...

16 MS. PIROOZI: DNA test.

17 MS. VEIGA: I couldn't even see it.

18 MS. PIROOZI: I will 16.2 you guys with that.

19 MS. VEIGA: (Indiscernible).

20 MR. YARMY: Why didn't you attach it to the motion to

21 begin with? I don't understand that. This. .

22 MS. PIROOZI: I...

23 MR. YARMY: ...predates your motion.

24 MS. PIROOZI: I don't know.

25 MR. YARMY: I mean, and then we're all gonna be surprised

1 by it at the last (indiscernible)?

2 MS. PIROOZI: Okay. You guys just showed up. I didn't

3 get any response from a...

4 MR. YARMY: I'm talking to the...

5 MS. PIROOZI: ...motion.

6 MR. YARMY: ...judge.

7 MS. PIROOZI: I never got an answer to any complaint...

8 MR. YARMY: Please...

9 MS. PIROOZI: ...filed in this...

10 MR. YARMY: ...you don't...

11 MS. PIROOZI: ...case.

12 MR. YARMY: ...own this room here.

13 MS. PIROOZI: And you guys...

14 THE COURT: Okay.

15 MS. PIROOZI: ...just show up?

16 THE COURT: Stop, stop.

17 MR. YARMY: I'd be very careful

18 THE COURT: Stop. Stop.

19 MS. PIROOZI: I'm the one ..

20 THE COURT: Stop.

21 MS. PIROOZI: ...who did everything wrong?

22 THE COURT: Everyone is gonna have a lot of feelings in

23 this case. And just because Dad may be the bio dad, doesn't

24 mean that that's where all the emotional feelings are lying.

25 He might be upset because he -- he should have custody because

1 he's the bio dad. But he's had five years to question it.
2 He's had five years to come in and ask for a...

3 MS. VEIGA: Six.

4 MS. MARTINEZ: Six.

5 THE COURT: ...paternity test. So unless fraud is proven
6 by Mom or you brief for me a way that fraud by a non-party can
7 be imputed to the party, then I will set an evidentiary
8 hearing. So I -- what I'll do is I'll send you guys to
9 mediation, encourage not to have to pay lawyers do all this
10 briefing while you mediate. And then if you don't agree on
11 some kind of a schedule, then I would say brief that stuff.
12 But let's try to get them to resolve it. I mean, I don't
13 understand why they -- at some point, Mom was letting the
14 child go with dad, with the other siblings.

15 MS. VEIGA: He just saw the -- the child yesterday.

16 THE COURT: Hold on. So...

17 MS. PIROOZI: Five minutes.

18 THE COURT: So it doesn't...

19 MS. MARTINEZ: Oh my God.

20 THE COURT: ...seem to me that this is an impossible
21 situation where both of these men could be considered...

22 MS. PIROOZI: Okay. A couple hours.

23 THE COURT: ...dad to this child. But this dad would not
24 be the legal father. So if you guys split up and you went for
25 child support, that dad would be paying child support for this

1 child. Do you see what I'm saying? So and also rights to
2 inherit and all that stuff.

3 But, you know, there's no reason why this Dad cannot
4 have a relationship either. I mean, you're already letting
5 him have one. So I'm suggesting that you simmer this whole
6 thing down because the law is what it is. And facts are
7 stubborn things.

8 So you can go to mediation center and work out
9 something and walk out of here without a trial, which is going
10 to cost you over ten to \$15,000 to put this trial on. Okay?
11 We're talking about a real -- a hard thing to prove. And
12 because it's not from a party, I don't think it's gonna apply.
13 But I'm not gonna say that that's the law because I -- I've
14 never researched that issue. It's an interesting issue
15 actually. But I -- I would not be doing that for your clients
16 until they try it because these guys do not seem like they
17 have a totally adverse relationship where Mom would not have
18 been sending Allen with Jazlynn.

19 So, I mean, I would say, work out something. Come,
20 each of you, with ideas so that not only, you know, Dad can
21 have the Jazlynn, Allen time, but that, you know, Henry,
22 Allen, Jazlynn and you guys have your time, you know, that --
23 that doesn't disrupt the family stuff too much, what you --
24 what you described.

25 MS. VEIGA: So should we wait until they go to mediation

1 see if they can work out some kind of visitation
2 (indiscernible)?

3 THE COURT: Yeah, try to get an early...

4 MS. VEIGA: Before the -- they have to hire attorneys or
5 in our case...

6 THE COURT: No...

7 MS. VEIGA: ...so we can come in...

8 THE COURT: Get an early.

9 MS. VEIGA: ...and argue the briefs.

10 THE COURT: Get an early date down there to -- so they
11 can all sit down together. And as soon as they know that they
12 have an impasse, then I would say, yeah, start briefing. And
13 if you want an earlier return date because they -- they
14 realize that's an impasse, then do your briefs and request
15 that so that I can look for a date if -- if -- because I have
16 to give, like, 90 days for FMC. But that doesn't mean that
17 they wouldn't have an agreement prior to that or not have one
18 to where you could actually be prepared with your briefs prior
19 to my hearing.

20 MS. PIROOZI: Your Honor, so since they're unbundled, I
21 mean, I'm preparing -- what does...

22 THE COURT: What -- where do you serve?

23 Who...

24 MS. PIROOZI: What am I doing?

25 THE COURT: Do you want to -- her to serve the both of...

1 MS. VEIGA: She -- she can serve them.

2 THE COURT: And so both attorneys don't want service
3 until they're hired for the next...

4 MS. VEIGA: Correct.

5 MR. YARMY: That's correct, Your Honor.

6 THE COURT: So absent, you know, signing off on an order,
7 which if you want to prepare the order from today's hearing,
8 you can do that, then I would say serve the two, the Mom and
9 the (indiscernible) Dad, basically.

10 MS. PIROOZI: Can we just get their addresses on the
11 record because I...

12 MR. YARMY: Yeah, we're gonna give it to you. We're
13 gonna write it down for you right now.

14 THE COURT: I -- I want to make sure we're correct in --
15 in the computer, too. And -- and everyone needs to know the
16 ten-day rule applies, which is ten days prior to changing
17 addresses, work or home; phone number, work, home, land or
18 cell; you need to notify the other parent in writing. It
19 could be text. It could be e-mail. And you need to update
20 the family court system by filing a one-page pleading that's
21 called notice of change. And it's on the Self-Help Center
22 website.

23 If you don't do that, and they serve you at the last
24 known address, sometimes relief gets granted when you haven't
25 really had notice. So you need to be really good about

1 updating your addresses.

2 MR. YARMY: Your Honor, my client has given the address
3 of 5729. I can't read that.

4 MR. OLIVA: Awakening Street.

5 MR. YARMY: Awakening Street, North Las Vegas, Nevada,
6 89081. And I've been informed...

7 MS. VEIGA: They share (indiscernible).

8 MR. YARMY: That that's the same address for her, too.
9 So they can both be served at this address. And I'm handing
10 it to his attorney.

11 MS. PIROOZI: Thank you.

12 THE COURT: 89081.

13 MR. OLIVA: 89081.

14 THE COURT: That's in North Las Vegas? I've never heard
15 of that number.

16 MS. PIROOZI: And we don't...

17 THE COURT: (Indiscernible). Every now and then they
18 create a new zip code. All right.

19 MS. PIROOZI: So we'd also like that DNA paternity test
20 as well.

21 THE COURT: No.

22 MR. YARMY: No.

23 THE COURT: They object.

24 MR. YARMY: We object.

25 THE COURT: And the law doesn't support it until there's

1 clear and convincing evidence of fraud. So after the
2 briefing, if they haven't reached an agreement, which I doubt
3 that these guys are gonna wanna pay ten to 15,000 for a trial.

4 MS. VEIGA: Each. Each.

5 THE COURT: I doubt they can even afford it. The
6 smartest thing to do is for you to go sit down and work out a
7 schedule. It's in the best interest of the kids. Just think
8 about what it -- what it feels like to be them and put
9 something together. But make sure that you maintain sibling
10 relationships and allow the child to have the relationships
11 with both.

12 If you find that you, you know, still want to
13 litigate the le- the legal issue even if you have a schedule,
14 I may require that he pays some fees up front if he wants to
15 litigate it because it's been five years. And basically,
16 unless you can bootstrap the fraud to the party, it's -- it's
17 not gonna be -- I'm not gonna have a case. I'm not gonna have
18 a trial if you cannot show me that that is something that is a
19 viable legal theory.

20 MS. PIROOZI: And I just need to brief that issue because
21 that's gonna be the issue.

22 THE COURT: It's clear and convincing. So clear and
23 convincing.

24 MS. VEIGA: That she committed the fraud unless there's
25 some case law out there that says that she's guilty of fraud

1 because he did something, if he did it.

2 MR. YARMY: No, because she's not aware of what he -- if
3 -- if he said anything. She may not be aware of what he said
4 to her. And really it's the issue...

5 THE COURT: It's really gotta be...

6 MR. YARMY: ...between these two parties that have a
7 relationship.

8 THE COURT: It's gotta be her saying, do this. Send it,
9 'cause that's her (indiscernible).

10 MR. YARMY: I mean, just because he...

11 MS. VEIGA: And that would have to be testimony from...

12 THE COURT: Fraud requires...

13 MS. VEIGA: ...her -- him.

14 THE COURT: ...intent.

15 MR. YARMY: Yeah, just because he said something...

16 THE COURT: Fraud is a pretty difficult...

17 MR. YARMY: ...doesn't alleviate him of inquiring back to
18 the person that he had a relationship with.

19 MS. PIROOZI: So it's my client's fault...

20 MR. YARMY: He didn't have a relationship...

21 MS. PIROOZI: ...that...

22 MR. YARMY: ...with him.

23 MS. PIROOZI: ...they just (indiscernible) a fake DNA
24 test on him in 2016.

25 MS. VEIGA: Well, it's your...

1 MS. PTROOZI: And they're...

2 THE COURT: You're saying they

3 MS. PIROOZI: ...acting like they don't know.

4 MS. VEIGA: Well...

5 THE COURT: You're saying they. But it's not on her
6 phone.

7 MS. PIROOZI: They live together

8 MS. PIROOZI: And...

9 MR. YARMY: No, before they didn't.

10 THE COURT: That's not how we bootstrap fraud.

11 : (Crosstalk- indiscernible)

12 MS. PIROOZI: Now we find out that they live together.

13 (Crosstalk - indiscernible)

14 MR. AVILA: 2015, they live -- they moved -- they moved
15 -- they were at -- they were moved in together In 2016, last
16 -- last year, she moved out when I was telling her more and
17 questioning her more about Allen. And that's when she move
18 out, out of her -- this guy's house.

19 MS. VEIGA: Your Honor, in March of 2017, he filed an
20 amended stipulated decree of custody. At that point, somebody
21 could've been brought up.

22 THE COURT: That was his lawyer who objected it.

23 MS. VEIGA: Correct.

24 THE COURT: And so...

25 MS. VEIGA: Something could've been brought up.

1 THE COURT: ...it can be held against (indiscernible).
2 MS. VEIGA: I believe this is my son. I just had in
3 January, I had a DNA test. I swabbed him at a McDonald's.
4 THE COURT: He decided with his lawyer not to do this.
5 So...
6 MS. VEIGA: Well, he said it under oath.
7 THE COURT: ...he purposely. .
8 MR. YARMY: His own admission.
9 THE COURT: ...decided...
10 MS. PIROOZI: You don't know what he decided ..
11 MR. YARMY: And that's on record.
12 THE COURT: He put it on the record.
13 MS. PIROOZI: ...to do with his lawyer.
14 MS. VEIGA: Yeah.
15 THE COURT: He admitted that.
16 MS. VEIGA: He put it on the record that he
17 (indiscernible) ...
18 MS. PIROOZI: He said he didn't...
19 MR. AVILA: Yes, Your Honor, but I -- I -- I asked both
20 of them to we can work it out. If he's mine, let's take a
21 paternity. Let -- let's work it out together out of court
22 And I asked both of them verbally. And they said, no, well
23 you should ask her. And then -- and then her, she's like, you
24 know what? I don't wanna talk about this. And that's when
25 she would use my daughter against me a lot. Oh you owe..

1 We're just gonna -- we're just gonna go based on the order.

2 MR. YARMY: This sounds like more admissions...

3 MS. VEIGA: The daughter?

4 MR. YARMY: ...to me, Your Honor

5 MS. VEIGA: The daughter would have been two years old
6 then.

7 MR. AVILA: This is...

8 MR. YARMY: But it's more admissions he knew he did
9 nothing.

10 MR. AVILA: I wouldn't be here, Your Honor. I wouldn't
11 -- I wouldn't be here if I knew -- if I didn't know about my
12 son. I found out about my son. I missed six years, yes. I
13 understand what you're saying.

14 THE COURT: Did you hear what I said about the law?

15 MR. AVILA: Yes.

16 THE COURT: I didn't create that law.

17 MR. AVILA: I know. I know. And I understand. But the
18 whole point, Your Honor, is I -- I never wanted to come to
19 court in the first place. I wanted to work it out of court to
20 save money for the kids to be there not confusing them as
21 much. But all of a sudden I'm the bad guy here. I -- it
22 looks like I'm the bad guy here.

23 MS. VEIGA: No but...

24 THE COURT: Well, no one has to be the bad guy if people
25 would...

1 MR. AVILA: Well, it sounds like it...
2 THE COURT: ...put down their...
3 MR. AVILA: ...because...
4 MS. PIROOZI: Yeah.
5 THE COURT: ...arms...
6 MS. PIROOZI: It sure does.
7 THE COURT: ...and sit down...
8 MR. AVILA: It sounds like it, Your Honor.
9 THE COURT: ...and work out a schedule.
10 MR. YARMY: Yeah, I think they're gonna work something
11 out. We're not...
12 MS. VEIGA: I think they'll work..
13 MR. YARMY: ...saying he's a bad guy.
14 MS. VEIGA: ...something out.
15 MR. YARMY: We're just protecting -- I'm protecting...
16 MR. AVILA: Yes.
17 MR. YARMY: ...this guy.
18 MR. AVILA: They are saying because they're saying that
19 all of it. All of a sudden you come into their, you know --
20 to Allen's life. And it's not that, Your Honor.
21 MS. VEIGA: Your Honor, he had notice.
22 THE COURT: Well, it's very immature of you to have
23 waited this long.
24 MR. AVILA: Well, no, it's not that.
25 THE COURT: Because you did not say, hey, I want another

1 child. I gotta find out if this is my child.

2 MR. AVILA: I did ask her, Your Honor. When she told me
3 about Allen.

4 THE COURT: You -- listen. Ignorance of the law is never
5 an excuse. If it was, everyone would use it. So even if you
6 weren't with counsel, but you were, you had Nedda, and she's
7 very smart, bottom line, when you know there's a child that
8 could possibly be yours, it is your responsibility to come
9 forward fast because that...

10 MR. AVILA: I did.

11 THE COURT: ...child is building...

12 MR. AVILA: Actually...

13 THE COURT: ...such important primary relationships that
14 are, that help base all of their secondary and tertiary
15 relationships on, based on the trust that they build with that
16 nurturing care giver. All right? If a dad was unfit or a dad
17 was, you know, not really involved or just paying child
18 support and not spending any time with that child, those are
19 different things. Those are different cases. This is -- this
20 is not that case. All right. And you didn't come in.

21 MR. AVILA: Okay. I -- first of all, I did ask Nedda
22 during the time that I was already finishing up with my
23 daughter's case because that's when I was noticing some
24 resemblance because I would see Allen and my daughter every
25 Friday because he would have school at that time.

1 THE COURT: But earlier you said, and then at that time,
2 I decided not to litigate. That's -- those were...
3 MS. PIROOZI: He didn't have the money ..
4 THE COURT: ...your words.
5 MS. PIROOZI: ...Your Honor.
6 MR. YARMY: It's still admission.
7 MS. VEIGA: That's not an excuse.
8 MS. PIROOZI: He -- he -- Nedda didn't bring it up.
9 THE COURT: I'm sorry that the law...
10 MS. PIROOZI: I can't do what...
11 THE COURT: I have to say I'm sorry for you guys...
12 MS. PIROOZI: ...her job for her.
13 THE COURT: ...that the law is what it is. But I've had
14 several of these lately. So I had to do a bunch of research.
15 And I did. And that is what it is. That's the law.
16 MS. VEIGA: Your Honor, he had notice. He was having sex
17 with her when she was...
18 MR. YARMY: I think the judge ..
19 MS. VEIGA: ...pregnant...
20 MR. YARMY: ...has ruled in our favor.
21 MS. VEIGA: ...from Allen.
22 MR. YARMY: (Indiscernible).
23 MS. VEIGA: He could've said, I want a DNA test.
24 MR. AVILA: I did.
25 MS. VEIGA: When he asked for a DNA test...

1 MR. AVILA: I did ask.
2 THE COURT: If someone really cares...
3 MS. VEIGA: ...on Jazlynn...
4 THE COURT: ...about raising kids...
5 MS. VEIGA: ...he could've said I want it on...
6 MR. AVILA: I did ask.
7 MS. VEIGA: ...on Allen.
8 THE COURT: ...I would think that if there was a...
9 MR. AVILA: I did ask, so.
10 THE COURT: ...question, you would get the paternity
11 test.
12 MR. AVILA: I did ask, Your Honor. And I was there
13 during the -- the nine-month period. And I...
14 MS. VEIGA: We're talking about leaving when you...
15 MR. AVILA: ...did ask when she was -- when Allen was
16 born, but then as a mom, she should know who's the father;
17 right?
18 MS. VEIGA: (Indiscernible).
19 MS. MARTINEZ: No.
20 MR. AVILA: Yes.
21 MS. MARTINEZ: No.
22 MR. AVILA: I mean, not once but twice. Twice.
23 MR. YARMY: Well, by that same theory...
24 MS. VEIGA: Your Honor...
25 MR. YARMY: ...you're on notice. You were on notice,

1 too.

2 MS. VEIGA: Your Honor...

3 MR. YARMY: And you've admitted it.

4 MS. VEIGA: When he filed in 2015 for the complaint...

5 THE COURT: I mean, he...

6 MS. VEIGA: ...for custody, he could've included Allen.

7 He could have...

8 THE COURT: When you say, I know six years...

9 MS. VEIGA: ... (indiscernible) having sex with her.

10 THE COURT: ...has gone by, like...

11 MS. PIROOZI: I -- I...

12 THE COURT: ...is that a...

13 MS. PIROOZI: I can't do anything...

14 THE COURT: ... (indiscernible) big deal?

15 MS. PIROOZI: ...for what his previous attorney was --

16 was doing but...

17 MR. YARMY: Yeah, but it doesn't buy him excuse...

18 THE COURT: That's -- that's him.

19 MR. YARMY: ...either though.

20 MS. PIROOZI: When he got a fake...

21 THE COURT: But when he's starting to (indiscernible)

22 something...

23 MS. PIROOZI: ...DNA test...

24 THE COURT: ...that's him.

25 MS. PIROOZI: When he got a fake DNA test, in his mind,

1 return date is ..

2 THE CLERK: March 29th at 9:30.

3 THE COURT: March 29th, 9:30. So take your clients down
4 to the FMC. It's on the left, before the handicap ramp. And
5 all the pleadings going forward need to include Henry as a
6 third-party defendant.

7 MS. PIROOZI: Okay.

8 THE COURT: All right, you guys. Have a good afternoon.

9 And, Arezou, you're gonna do an order from today's
10 hearing, if you'd like or if you'd wanna wait until the
11 mediation, either way. And then the other counsel will sign
12 off on that.

13 MS. PIROOZI: Okay. They're gonna sign off or not sign
14 off?

15 MR. YARMY: Your Honor...

16 THE COURT: They can have seven days to review and sign
17 off on the order. If they don't review and sign off and it
18 matches the minutes or matches exactly what I said on -- on --
19 on the video, then I will sign it, even if they don't sign it.

20 MS. PIROOZI: Okay. Thank you, Your Honor.

21 THE COURT: But that's seven judicial days.

22 MS. PIROOZI: Okay.

23 THE COURT: Because anything under 11 is...

24 (THE PROCEEDING ENDED AT 10:28:32.)

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ATTEST: I do hereby certify that I have truly and correctly transcribed the digital proceedings in the above-entitled case to the best of my ability.



KATHERINE RICE
Transcriber

1 ROC

FILED
DEC 28 2018
Shirley L. Johnson
CLERK OF COURT

2
3 ORIGINAL

4 EIGHTH JUDICIAL DISTRICT COURT

5 FAMILY DIVISION

6 CLARK COUNTY, NEVADA

7
8 IGNACIO AVILA, JR.,)
9 Plaintiff,)
10 vs.)
11 ROSIE MARTINEZ,)
12 Defendant.)
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CASE NO. D-15-515892-C
DEPT. L
APPEAL NO. 77242

RECEIPT OF COPY

RECEIPT OF COPY of transcript and certification of the
JANUARY 25, 2018, SEPTEMBER 11, 2018, hearings in the above-
captioned case that were filed December 28, 2018, for Arezou
Piroozi, Esq., is acknowledged this 18 day of January
2018.

BY 

Arezou Piroozi, Esq.
509 S. Sixth St.
Las Vegas, Nevada 89101

FILED

DEC 28 2018

John J. Schuman
CLERK OF COURT

1 TRANS

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3
4 ORIGINAL

5 EIGHTH JUDICIAL DISTRICT COURT

6 FAMILY DIVISION

7 CLARK COUNTY, NEVADA

8
9 IGNACIO AVILA, JR.,)

CASE NO. D-15-515892-C

10 Plaintiff,)

DEPT. L

11 vs.)

APPEAL NO. 77242

12 ROSIE MARTINEZ,)

13 Defendant.)

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16 BEFORE THE HONORABLE GERALD W. HARDCASTLE

17 TRANSCRIPT RE: ALL PENDING MOTIONS

18 TUESDAY, SEPTEMBER 11, 2018

1 APPEARANCES:

2
3 The Plaintiff: IGNACIO AVILA, JR.
4 For the Plaintiff: AREZOU PIROOZI, ESQ.
5 509 S. Sixth St.
6 Las Vegas, Nevada 89101

7 The Defendant: ROSIE MARTINEZ (Not present)
8 For the Defendant: Pro se

9 The Third-Party
10 Defendant: HENRY OLIVA
11 For the Third-Party
12 Defendant: STEVEN YARMY, ESQ.
13 7464 W. Sahara Ave.
14 Las Vegas, Nevada 89117

1 LAS VEGAS, NEVADA

TUESDAY, SEPTEMBER 11, 2018

2 PROCEEDINGS

3 (THE PROCEEDING BEGAN AT 10:25:05.)

4 THE COURT: This is in Avila versus Martinez. This is
5 the time set for the hearing on the motion to reconsider. I
6 have reviewed the motion and the underlying decision.

7 Could I get everybody to identify themselves,
8 please?

9 MS. PIROOZI: Good morning, Your Honor. Arezou Piroozi,
10 Bar Number 10187, on behalf of plaintiff, Ignacio Avila,
11 Junior, who is present.

12 MR. YARMY: Good morning, Your Honor. Steven Yarmy. I
13 represent Henry Oliva. He's a -- basically, a third-party
14 defendant. He's the putative father (indiscernible).

15 THE COURT: All right. And I think it's Mr. Oliva's --
16 well, it's...

17 MR. YARMY: He's the father.

18 THE COURT: He's the father. Okay. This is the
19 paternity file, yeah. Anything else?

20 I -- I'm -- for some reason, I made my notes here. I've
21 got my notes. It's -- it's -- it's your motion to reconsider,
22 correct? Your motion.

23 MS. PIROOZI: It's my motion.

24 THE COURT: Your mo- your motion to reconsider. All
25 right. And it was the opposition filed by...

1 MR. YARMY: Henry Oliva, the father.
2 THE COURT: Is that Mr. Oliva?
3 MR. OLIVA: Yes.
4 MR. YARMY: Yes, Your Honor.
5 THE COURT: Okay. There we go. Now that's got...
6 And you represent?
7 MR. YARMY: I'm representing him.
8 THE COURT: Him. Okay.
9 MR. YARMY: The -- the mother is -- did not file an
10 opposition, is not present.
11 THE COURT: Okay. All right.
12 MS. PIROOZI: And I filed a notice of (indiscernible).
13 THE COURT: All right. There -- there we go. That's
14 got...
15 MR. YARMY: That's that thing...
16 THE COURT: Now I'm straightened out.
17 MR. YARMY: ...that was missing that.
18 THE COURT: Okay. This is the -- this is the putative
19 father.
20 UNIDENTIFIED SPEAKER: Yes, sir.
21 THE COURT: Okay. Motion to reconsider. I have read
22 it. I have to say one thing. It is -- I -- I -- I can
23 sometimes be critical of one of the great things you do is if
24 you live long enough in this business and sit up here long
25 enough that you can -- judges come and go. And you can always

1 make fun of the judges that have left because they're not here
2 to defend themselves. And that's -- it's always a great
3 opportunity. And I can be critical of Judge Elliot on
4 occasion. She was much more of a social worker than I ever
5 was.

6 But I thought she did -- I read her decision. And I
7 -- to tell you the truth, I was impressed with it. She
8 carefully considered the facts, the law and made a decision.

9 Based on the motion, I think the motion to
10 reconsider is denied.

11 MS. PIROOZI: Your Honor, I'd like to make the record
12 clear because I'm gonna appeal this decision.

13 THE COURT: Sure.

14 MS. PIROOZI: First of all, there was a text message...

15 THE COURT: You're appealing -- you're appealing my
16 motion to reconsider?

17 MS. PIROOZI: Yes.

18 THE COURT: Okay.

19 MS. PIROOZI: And I'm gonna take it all the way up
20 because my client is being...

21 THE COURT: There's only a couple of steps.

22 MS. PIROOZI: Yeah.

23 THE COURT: Fortunately it's not that high. Go ahead.

24 MS. PIROOZI: Right. Your Honor, my client, if you do
25 not allow him to take the paternity test and do not allow him

1 an evidentiary hearing, he's being denied his rights. It's
2 basically tantamount to a termination of parental rights
3 without due process.

4 THE COURT: Okay. Counsel, I read the briefs. You --
5 you're not -- you're not supplement -- first of all, argument
6 is not part of a record. And you've made the record. And
7 you've made your -- your -- I mean, your showing.

8 MS. PIROOZI: There was...

9 THE COURT: But I think the one thing that about the
10 decision that was -- that was impressive, and that is, is --
11 and the one thing that Judge Elliot said that I -- I agree
12 with, and that is, is that biol- biology, DNA test, and here
13 we, you know, that they're not determinative and conclusory or
14 -- or they -- they don't determine paternity as we really look
15 at fathering as more than biology and we look at it more
16 substantively. And that Judge Elliot did a good job of
17 explaining it. I'm not going to interfere with that decision.
18 That motion to reconsider is denied.

19 MS. PIROOZI: Your Honor...

20 THE COURT: I -- the -- the -- the whole point I'm trying
21 to make is, is -- and if you're trying to make a record,
22 speeches by attorneys, right now, are not part of a record.
23 They're not. They're not.

24 MS. PIROOZI: Well, as part of your order, I would like
25 it to reflect that my client is the biological father of this

1 child. He was denied the opportunity to take a court-ordered
2 paternity test. Although he has two separate paternity tests
3 showing he is the father.

4 THE COURT: Counsel...

5 MS. PIROOZI: Defendant

6 THE COURT: ...the record...

7 MS. PIROOZI: ...on the record showed...

8 THE COURT: The record is as...

9 MS. PIROOZI: ...a fake DNA test.

10 THE COURT: Counsel, don't argue with me.

11 MS. PIROOZI: I'm just...

12 THE COURT: No, no. Listen to me. Here's the bottom
13 line is. The record has been made. Whatever you mean by the
14 record, which is just an excuse to try to argue and try to
15 talk me out of something, has been made. Whatever you're
16 taking upon appeal and they're gonna consider, they will have
17 -- is here. There's nothing more.

18 I have looked at -- at Judge Elliot's decision. I
19 believe that consideration is -- reconsideration is not
20 warranted. The motion is denied. Additionally, I'm going to
21 award Mr. Yarmy's client \$1000 in attorney's fees. That will
22 be reduced to judgment.

23 MS. PIROOZI: Your Honor, I would like your reasoning as
24 to why you think that my client had to meet a burden of proof
25 when he met this -- the...

1 THE COURT: Counsel, you don't...
2 MS. PIROOZI: ...the minimum burden...
3 THE COURT: Counsel, the...
4 MS. PIROOZI: ...under Rooney...
5 THE COURT: ...record is...
6 MS. PIROOZI: ...to have an evidentiary hearing.
7 THE COURT: ...what it is. It stands. You may not agree
8 with it.
9 MS. PIROOZI: There was -- there was no -- there...
10 THE COURT: Counsel, do not argue with me.
11 MS. PIROOZI: I would...
12 THE COURT: Do not argue with me.
13 MS. PIROOZI: I will...
14 THE COURT: You will now leave.
15 MS. PIROOZI: I'm not.
16 THE COURT: This is a good point to turn around and
17 leave. Because quite frankly is, the record's been made. The
18 motion has been denied. The order will be -- I...
19 Counsel, I want you to prepare the -- the order.
20 MR. YARMY: I will. I'll run it by counsel.
21 THE COURT: You -- you -- the fact that you want to argue
22 with me is of no consequence.
23 MS. PIROOZI: I'm not arguing.
24 THE COURT: Learn to accept the decision and -- and
25 leave.

1 MS. PIROOZI: I'm just -- I'm not arguing. I just...

2 THE COURT: Yes, you are. Leave.

3 MR. YARMY: Thank you, Your Honor.

4 (THE PROCEEDING ENDED AT 10:31:14.)


5

6 * * * * *

7 ATTEST: I do hereby certify that I have truly and
8 correctly transcribed the digital proceedings in the above-
entitled case to the best of my ability.

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SHERRY JUSTICE,
Transcriber II

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Heather L. Shuman
CLERK OF THE COURT

COURT CODE: MOT

Your Name: Rosa Martinez

Address: 5005 Losee Rd #3019
North Las Vegas NV 89081

Telephone: 702 353 9271

Email Address: rose-n-vegas@yahoo.com

Self-Represented

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Ignacio Avila
Plaintiff,

vs.

Rosa Martinez
Defendant.

CASE NO.: D-15-515892-C-

DEPT: _____

Hearing Requested? (☒ check one, the clerk will
enter dates when you file)

☐ Yes. Hearing Date: _____

Hearing Time: _____

☒ No. Chambers Decision: 3-11-2020

**MOTION AND NOTICE OF MOTION TO MODIFY CHILD SUPPORT AND/OR
SPOUSAL SUPPORT**

TO: Name of Opposing Party and Party's Attorney, if any, Ignacio Avila

If a hearing was requested above, the hearing on this motion will be held on the date and
time above before the Eighth Judicial District Court - Family Division located at:

(clerk will check one)

- ☒ The Family Courts and Services Center, 601 N. Pecos Road Las Vegas, Nevada 89101.
☐ The Regional Justice Center, 200 Lewis Avenue Las Vegas, Nevada 89101.
☐ The Child Support Center of Southern Nevada, 1900 E. Flamingo Rd #100, LV NV 89119.

**NOTICE: You may file a written response to this motion with the Clerk of the
Court and provide the undersigned with a copy of your response within 14
days of receiving this motion. Failure to file a written response with the Clerk
of Court within 14 days of your receipt may result in the requested relief being
granted by the Court without a hearing prior to the scheduled hearing date.**

Submitted By: Rosa Martinez

☐ Plaintiff / ☒ Defendant

MOTION

(Your name) Rosa Martin moves this Court for an Order modifying child support and/or spousal support. (☒ check one)

- ☒ I tried to resolve this issue with the other party before filing this motion.
- ☐ I did not try to resolve this issue with the other party before filing this motion. Any attempt to resolve the issue would have been useless or impractical because (*explain why you did not try to resolve this issue directly with the other party before filing this motion*)
-
-

Financial Disclosure Form ("FDF") Certification

(☒ check one)

- ☐ I filed a FDF in the last 6 months and have no material changes to report.
- ☐ I understand that I must file my FDF within 3 days of filing this to support my request to modify child support and/or spousal support. Failure to file a timely, complete, and accurate FDF may result in the court ruling against me and/or imposing sanctions.

POINTS AND AUTHORITIES LEGAL ARGUMENT

A child support order must be reviewed by the court every three years upon request of a parent or guardian. A child support order may be reviewed at any time on the basis of changed circumstances. A change in 20% or more in the gross monthly income of a person subject to a child support order shall be deemed changed circumstances. NRS 125B.145.

An order for alimony may be modified on the basis of changed circumstances. A change in 20% or more in the gross monthly income of a person ordered to pay alimony shall be deemed changed circumstances. In addition to any other factors the court finds relevant, the court shall consider whether the income of the spouse ordered to pay alimony, as indicated on the spouse's federal tax return from the previous year, has been reduced to such a level that the spouse is financially unable to pay the amount ordered. NRS 125.150.

FACTS AND ARGUMENT

A. Request to Modify Child Support

☐ Not Applicable (☒ check if not applicable and go to Section B)

1. Current Child Support Order.

(Name of party) Ignacio Avila currently pays (amount) \$400 per month in child support for (number) 1 minor children. I want this order modified.

2. Current Physical Custody Order.

Child's Name:	Date of Birth	Current Physical Custody Order:
Jazlynn Martinez - Avila	10/25/13	<input type="checkbox"/> Joint physical custody <input checked="" type="checkbox"/> I have Primary/Sole physical custody <input type="checkbox"/> Other parent has Primary/Sole physical custody
		<input type="checkbox"/> Joint physical custody <input type="checkbox"/> I have Primary/Sole physical custody <input type="checkbox"/> Other parent has Primary/Sole physical custody
		<input type="checkbox"/> Joint physical custody <input type="checkbox"/> I have Primary/Sole physical custody <input type="checkbox"/> Other parent has Primary/Sole physical custody
		<input type="checkbox"/> Joint physical custody <input type="checkbox"/> I have Primary/Sole physical custody <input type="checkbox"/> Other parent has Primary/Sole physical custody

3. Public Assistance. (☒ check one)

☒ I have never received Temporary Assistance for Needy Families (TANF).

☐ I am now or have received Temporary Assistance for Needy Families (TANF) in the past.

4. Parties' Income.

My gross monthly income is (insert amount): \$35,000 / OR ☐ unknown.

The other parent's gross monthly income is (insert amount): \$ _____ / OR ☒ unknown.

5. **Reason for Modification.** I want child support modified because: (☒ check all that apply)

☐ The gross monthly income of the person paying child support has changed by more than 20% since the last child support order was entered.

☒ It has been more than three years since child support was last reviewed.

☐ The following child(ren) has/have emancipated (write name(s)):

☒ The parties are not following the custodial schedule on which child support was based:
(explain the custodial schedule you have been following):

It's been more than 3 months and I
not received it.

It is in the children's best interest to modify child support because (tell the judge why it is in the children's best interest to change child support):

6. **Amount Requested.** (☒ check one)

☐ Child support should be modified so that (name of person who should pay child support)

_____ pays (amount) \$_____ per month in child support.

☒ I'm not sure how much child support should be paid. The judge should set child support.

☐ Other (explain how you came up with the amount of child support):

7. **Child Care.** Are there child care expenses? (☒ check one)

☒ No, there are no child care costs for either parent.

☐ Yes, the monthly child care costs for the child(ren) are: \$_____. This amount
should be paid by ☐ me only ☐ the other parent only ☐ both parents equally.

8. **Medical Coverage.** Medical support (medical, vision, and/or dental) must be provided for the child(ren). How should the children get medical support/insurance? (☒ *check one*)

☐ Medicaid.

☐ Private / Employer Insurance. The monthly premium should be paid by ☐ me only

☐ the other parent only ☒ both parents equally.

☐ Other: _____

B. Request to Modify Spousal Support

☐ Not Applicable (☒ *check if not applicable and go to section C*)

9. **Current Spousal Support Order.**

(Name of party paying spousal support) _____ currently pays (amount)

\$ _____ per month in spousal support. I want this order modified.

10. **Parties' Income.**

My gross monthly income is (insert amount): \$ _____ / OR ☐ unknown.

The other party's gross monthly income is (insert amount): \$ _____ / OR ☐ unknown.

11. **Modification.** Spousal support should be modified because: (☒ *check all that apply*)

☐ The gross monthly income of the person paying spousal support has changed by more than 20% since the last spousal support order was entered.

☐ I am required to pay spousal support, but my income has been reduced to such a level that I am financially unable to pay the amount of spousal support ordered. I will submit my federal tax return for the last year for the Court's review.

☐ The person receiving spousal support has remarried.

☐ The person receiving spousal support is now deceased.

☐ Other: _____

12. Amount Requested.

Spousal support should be modified so that (*name of person who should pay spousal support*)
_____ pays (*amount*) \$ _____ per month in spousal support.

C. Other Relief

13. In addition to the relief requested above, I would like the Court to also order the following:

(*Explain anything else that you would like the judge to order, or enter "N/A" if you do not want anything else. Be specific.*) _____

I respectfully ask the Court to grant me the relief requested above, including an award of attorney's fees if I am able to retain an attorney for this matter, and any other relief the Court finds appropriate.

DATED Jan 31, 2020.

Submitted By: (*your signature*) Rosa May
(*print your name*) Rosa Martinez

DECLARATION IN SUPPORT OF MOTION TO MODIFY CHILD SUPPORT AND/OR SPOUSAL SUPPORT

I declare, under penalty of perjury:

1. I have read the foregoing motion, and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.
2. Any Exhibit(s) in support of this Motion will be filed separately in an Exhibit Appendix.

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

DATED Jan 31, 2020.

Submitted By: (*your signature*) Rosa May
(*print your name*) Rosa Martinez

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Rosa Martinez

Plaintiff/Petitioner

v.

Ignacio

Defendant/Respondent

Case No. _____

Dept. _____

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of \$25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of \$129 or \$57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the \$25 or \$0 filing fee in the box below.

- ☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☐ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

Party filing Motion/Opposition: Rosa Martinez Date 1/31/20

Signature of Party or Preparer _____

AA000464

Heather J. Smith
CLERK OF THE COURT

COURT CODE: MOT

Your Name: Rosa Martinez

Address: 5005 Losee Rd #3019
North Las Vegas NV 89081

Telephone: 702 353 9271

Email Address: rose-n-vegas@yahoo.com

Self-Represented

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Ignacio Aila
Plaintiff,

vs.

Rosa Martinez
Defendant.

CASE NO.: D-15-515892-C-

DEPT: _____

Hearing Requested? (☒ check one, the clerk will
enter dates when you file)

☐ Yes. Hearing Date: _____

Hearing Time: _____

☒ No. Chambers Decision: 3-11-2020

**MOTION AND NOTICE OF MOTION TO MODIFY CHILD SUPPORT AND/OR
SPOUSAL SUPPORT**

TO: Name of Opposing Party and Party's Attorney, if any, Ignacio Aila

If a hearing was requested above, the hearing on this motion will be held on the date and
time above before the Eighth Judicial District Court - Family Division located at:

(clerk will check one)

- ☒ The Family Courts and Services Center, 601 N. Pecos Road Las Vegas, Nevada 89101.
☐ The Regional Justice Center, 200 Lewis Avenue Las Vegas, Nevada 89101.
☐ The Child Support Center of Southern Nevada, 1900 E. Flamingo Rd #100, LV NV 89119.

NOTICE: You may file a written response to this motion with the Clerk of the
Court and provide the undersigned with a copy of your response within 14
days of receiving this motion. Failure to file a written response with the Clerk
of Court within 14 days of your receipt may result in the requested relief being
granted by the Court without a hearing prior to the scheduled hearing date.

Submitted By: Rosa Martinez

☐ Plaintiff / ☒ Defendant

MOTION

(Your name) Rosa Martinez moves this Court for an Order modifying child support and/or spousal support. (☒ check one)

- ☒ I tried to resolve this issue with the other party before filing this motion.
- ☐ I did not try to resolve this issue with the other party before filing this motion. Any attempt to resolve the issue would have been useless or impractical because (*explain why you did not try to resolve this issue directly with the other party before filing this motion*)
- _____
- _____

Financial Disclosure Form ("FDF") Certification

(☒ check one)

- ☐ I filed a FDF in the last 6 months and have no material changes to report.
- ☐ I understand that I must file my FDF within 3 days of filing this to support my request to modify child support and/or spousal support. Failure to file a timely, complete, and accurate FDF may result in the court ruling against me and/or imposing sanctions.

**POINTS AND AUTHORITIES
LEGAL ARGUMENT**

A child support order must be reviewed by the court every three years upon request of a parent or guardian. A child support order may be reviewed at any time on the basis of changed circumstances. A change in 20% or more in the gross monthly income of a person subject to a child support order shall be deemed changed circumstances. NRS 125B.145.

An order for alimony may be modified on the basis of changed circumstances. A change in 20% or more in the gross monthly income of a person ordered to pay alimony shall be deemed changed circumstances. In addition to any other factors the court finds relevant, the court shall consider whether the income of the spouse ordered to pay alimony, as indicated on the spouse's federal tax return from the previous year, has been reduced to such a level that the spouse is financially unable to pay the amount ordered. NRS 125.150.

FACTS AND ARGUMENT

A. Request to Modify Child Support

☐ Not Applicable (☒ check if not applicable and go to Section B)

1. Current Child Support Order.

(Name of party) Ignacio Avila currently pays (amount) \$400 per month in child support for (number) 1 minor children. I want this order modified.

2. Current Physical Custody Order.

Child's Name:	Date of Birth	Current Physical Custody Order:
Jazlyn Martinez - Avila	10/25/13	<input type="checkbox"/> Joint physical custody <input checked="" type="checkbox"/> I have Primary/Sole physical custody <input type="checkbox"/> Other parent has Primary/Sole physical custody
		<input type="checkbox"/> Joint physical custody <input type="checkbox"/> I have Primary/Sole physical custody <input type="checkbox"/> Other parent has Primary/Sole physical custody
		<input type="checkbox"/> Joint physical custody <input type="checkbox"/> I have Primary/Sole physical custody <input type="checkbox"/> Other parent has Primary/Sole physical custody
		<input type="checkbox"/> Joint physical custody <input type="checkbox"/> I have Primary/Sole physical custody <input type="checkbox"/> Other parent has Primary/Sole physical custody

3. Public Assistance. (☒ check one)

- ☒ I have never received Temporary Assistance for Needy Families (TANF).
☐ I am now or have received Temporary Assistance for Needy Families (TANF) in the past.

4. Parties' Income.

My gross monthly income is (insert amount): \$35,000 / OR ☐ unknown.

The other parent's gross monthly income is (insert amount): \$_____ / OR ☒ unknown.

5. **Reason for Modification.** I want child support modified because: (☒ check all that apply)

☐ The gross monthly income of the person paying child support has changed by more than 20% since the last child support order was entered.

☒ It has been more than three years since child support was last reviewed.

☐ The following child(ren) has/have emancipated (write name(s)):

☒ The parties are not following the custodial schedule on which child support was based:
(explain the custodial schedule you have been following):

It's been more than 3 months and I
not received it.

It is in the children's best interest to modify child support because (tell the judge why it is in
the children's best interest to change child support):

6. **Amount Requested.** (☒ check one)

☐ Child support should be modified so that (name of person who should pay child support)
_____ pays (amount) \$_____ per month in child support.

☒ I'm not sure how much child support should be paid. The judge should set child support.

☐ Other (explain how you came up with the amount of child support):

7. **Child Care.** Are there child care expenses? (☒ check one)

☒ No, there are no child care costs for either parent.

☐ Yes, the monthly child care costs for the child(ren) are: \$_____. This amount
should be paid by ☐ me only ☐ the other parent only ☐ both parents equally.

8. **Medical Coverage.** Medical support (medical, vision, and/or dental) must be provided for the child(ren). How should the children get medical support/insurance? (☒ check one)

☐ Medicaid.

☐ Private / Employer Insurance. The monthly premium should be paid by ☐ me only

☐ the other parent only ☒ both parents equally.

☐ Other: _____

B. Request to Modify Spousal Support

☐ Not Applicable (☒ check if not applicable and go to section C)

9. **Current Spousal Support Order.**

(Name of party paying spousal support) _____ currently pays (amount)

\$ _____ per month in spousal support. I want this order modified.

10. **Parties' Income.**

My gross monthly income is (insert amount): \$ _____ / OR ☐ unknown.

The other party's gross monthly income is (insert amount): \$ _____ / OR ☐ unknown.

11. **Modification.** Spousal support should be modified because: (☒ check all that apply)

☐ The gross monthly income of the person paying spousal support has changed by more than 20% since the last spousal support order was entered.

☐ I am required to pay spousal support, but my income has been reduced to such a level that I am financially unable to pay the amount of spousal support ordered. I will submit my federal tax return for the last year for the Court's review.

☐ The person receiving spousal support has remarried.

☐ The person receiving spousal support is now deceased.

☐ Other: _____

12. Amount Requested.

Spousal support should be modified so that *(name of person who should pay spousal support)*
_____ pays (amount) \$ _____ per month in spousal support.

C. Other Relief

13. In addition to the relief requested above, I would like the Court to also order the following:

(Explain anything else that you would like the judge to order, or enter "N/A" if you do not want anything else. Be specific.) _____

I respectfully ask the Court to grant me the relief requested above, including an award of attorney's fees if I am able to retain an attorney for this matter, and any other relief the Court finds appropriate.

DATED Jan 31, 2020.

Submitted By: (your signature) _____

(print your name) _____

Rosa May

Rosa Martinez

DECLARATION IN SUPPORT OF MOTION TO MODIFY CHILD SUPPORT AND/OR SPOUSAL SUPPORT

I declare, under penalty of perjury:

1. I have read the foregoing motion, and the factual averments it contains are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the referenced filing are incorporated here as if set forth in full.
2. Any Exhibit(s) in support of this Motion will be filed separately in an Exhibit Appendix.

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

DATED Jan 31, 2020.

Submitted By: (your signature) _____

(print your name) _____

Rosa May

Rosa Martinez

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Rosa Martinez
Plaintiff/Petitioner
v.
Ignacio
Defendant/Respondent

Case No. _____

Dept. _____

**MOTION/OPPOSITION
FEE INFORMATION SHEET**

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- ☐ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.
-OR-
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
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 - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
 - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
 - ☐ Other Excluded Motion (must specify) _____.

Step 2. Select the \$0, \$129 or \$57 filing fee in the box below.

- ☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
 - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.
-OR-
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☐ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☐ \$129 ☐ \$154

✓ Party filing Motion/Opposition: Rosa Martinez Date 1/31/20

Signature of Party or Preparer _____

AA000471

Heather J. Smith
CLERK OF THE COURT

MISC
Name: Rosa Martinez
Address: 5005 Losee Rd
#3019 North Las Vegas
Phone: 702 3539271
Email: rose_n_vegas@yahoo.com
Attorney for _____
Nevada State Bar No. _____

8TH Judicial District Court

CLARK COUNTY, Nevada

<u>Ignacio Kula</u> Plaintiff,	Case No. <u>D-515892-C</u>
vs. <u>Rosa Martinez</u> Defendant.	Dept. _____

GENERAL FINANCIAL DISCLOSURE FORM

A. Personal Information:

1. What is your full name? (first, middle, last) Rosa Elena Martinez
2. How old are you? 39
3. What is your date of birth? _____
4. What is your highest level of education? 2yr College

B. Employment Information:

1. Are you currently employed/ self-employed? (☒ check one)

☐ No

☒ Yes If yes, complete the table below. Attached an additional page if needed.

Date of Hire	Employer Name	Job Title	Work Schedule (days)	Work Schedule (shift times)
<u>9/15/2015</u>	<u>The Cosmopolitan</u>	<u>Fountain worker</u>	<u>Sun and Mon</u>	<u>1030 a- 630 pm</u>
	<u>of Las Vegas</u>	<u>Cashier</u>	<u>OFF</u>	

2. Are you disabled? (☒ check one)

☒ No

☐ Yes

If yes, what is your level of disability? _____

What agency certified you disabled? _____

What is the nature of your disability? _____

- C. Prior Employment:** If you are unemployed or have been working at your current job for less than 2 years, complete the following information.

Prior Employer: _____ Date of Hire: _____ Date of Termination: _____
Reason for Leaving: _____

Monthly Personal Income Schedule

A. Year-to-date Income.

As of the pay period ending _____ my gross year to date pay is 35,000.

B. Determine your Gross Monthly Income.

Hourly Wage

16.84	×	35	=	589.40	×	52	=	30,648.80	÷	12	=	2,554.07
Hourly Wage		Number of hours worked per week		Weekly Income		Weeks		Annual Income		Months		Gross Monthly Income

Annual Salary

35,000	÷	12	=	2,916.67
Annual Income		Months		Gross Monthly Income

C. Other Sources of Income.

Source of Income	Frequency	Amount	12 Month Average
Annuity or Trust Income			
Bonuses			
Car, Housing, or Other allowance:			
Commissions or Tips:			
Net Rental Income:			
Overtime Pay			
Pension/Retirement:			
Social Security Income (SSI):			
Social Security Disability (SSD):			
Spousal Support			
Child Support			
Workman's Compensation			
Other:			
Total Average Other Income Received			

Total Average Gross Monthly Income (add totals from B and C above)	
--	--

D. Monthly Deductions

	Type of Deduction	Amount
1.	Court Ordered Child Support (automatically deducted from paycheck)	
2.	Federal Health Savings Plan	
3.	Federal Income Tax	9583
4.	Health Insurance Amount for you: _____ For Opposing Party: _____ For your Child(ren): _____	
5.	Life, Disability, or Other Insurance Premiums	
6.	Medicare	\$21.81
7.	Retirement, Pension, IRA, or 401(k)	
8.	Savings	
9.	Social Security	\$93.26
10.	Union Dues	\$50 mth
11.	Other: (Type of Deduction)	
Total Monthly Deductions (Lines 1-11)		

Business/Self-Employment Income & Expense Schedule

A. Business Income:

What is your average gross (pre-tax) monthly income/revenue from self-employment or businesses?

\$ \$1,010.47

B. Business Expenses: Attach an additional page if needed.

Type of Business Expense	Frequency	Amount	12 Month Average
Advertising			
Car and truck used for business			
Commissions, wages or fees			
Business Entertainment/Travel			
Insurance			
Legal and professional			
Mortgage or Rent			
Pension and profit-sharing plans			
Repairs and maintenance			
Supplies			
Taxes and licenses (include est. tax payments)			
Utilities			
Other:			
Total Average Business Expenses			

Personal Expense Schedule (Monthly)

A. Fill in the table with the amount of money you spend each month on the following expenses and check whether you pay the expense for you, for the other party, or for both of you.

Expense	Monthly Amount I Pay	For Me <input checked="" type="checkbox"/>	Other Party <input type="checkbox"/>	For Both <input type="checkbox"/>
Alimony/Spousal Support				
Auto Insurance		\$120.00		
Car Loan/Lease Payment		\$389.00		
Cell Phone		\$100.00		
Child Support (not deducted from pay)				
Clothing, Shoes, Etc...		\$100.00		
Credit Card Payments (minimum due)		\$30.00		
Dry Cleaning				
Electric		\$70.00		
Food (groceries & restaurants)		\$200.00		
Fuel		\$160.00		
Gas (for home)		\$20.00		
Health Insurance (not deducted from pay)				
HOA				
Home Insurance (if not included in mortgage)				
Home Phone				
Internet/Cable		\$77.00		
Lawn Care				
Membership Fees		\$20.00		
Mortgage/Rent/Lease		\$1,080.00		
Pest Control				
Pets				
Pool Service				
Property Taxes (if not included in mortgage)				
Security				
Sewer				
Student Loans		\$160.00		
Unreimbursed Medical Expense				
Water				
Other:				
Total Monthly Expenses	2,466.00			

Household Information

- A. Fill in the table below with the name and date of birth of each child, the person the child is living with, and whether the child is from this relationship. Attached a separate sheet if needed.

	Child's Name	Child's DOB	Whom is this child living with?	Is this child from this relationship?	Has this child been certified as special needs/disabled?
1 st	Jazlynn Martinez	10/25/13	Mom	Yes	No
2 nd					
3 rd					
4 th					

- B. Fill in the table below with the amount of money you spend each month on the following expenses for each child.

Type of Expense	1 st Child	2 nd Child	3 rd Child	4 th Child
Cellular Phone				
Child Care				
Clothing	\$80			
Education				
Entertainment	\$100			
Extracurricular & Sports				
Health Insurance (if not deducted from pay)				
Summer Camp/Programs				
Transportation Costs for Visitation				
Unreimbursed Medical Expenses				
Vehicle				
Other:				
Total Monthly Expenses	\$180			

- C. Fill in the table below with the names, ages, and the amount of money contributed by all persons living in the home over the age of eighteen. If more than 4 adult household members attached a separate sheet.

Name	Age	Person's Relationship to You (i.e. sister, friend, cousin, etc...)	Monthly Contribution

Personal Asset and Debt Chart

A. Complete this chart by listing all of your assets, the value of each, the amount owed on each, and whose name the asset or debt is under. If more than 15 assets, attach a separate sheet.

Line	Description of Asset and Debt Thereon	Gross Value	Total Amount Owed	Net Value	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$ -	\$ -	\$ -	
2.		\$ -	\$ -	\$ -	
3.		\$ -	\$ -	\$ -	
4.		\$ -	\$ -	\$ -	
5.		\$ -	\$ -	\$ -	
6.		\$ -	\$ -	\$ -	
7.		\$ -	\$ -	\$ -	
8.		\$ -	\$ -	\$ -	
9.		\$ -	\$ -	\$ -	
10.		\$ -	\$ -	\$ -	
11.		\$ -	\$ -	\$ -	
12.		\$ -	\$ -	\$ -	
13.		\$ -	\$ -	\$ -	
14.		\$ -	\$ -	\$ -	
15.		\$ -	\$ -	\$ -	
Total Value of Assets (add lines 1-15)		\$ -	\$ -	\$ -	

B. Complete this chart by listing all of your unsecured debt, the amount owed on each account, and whose name the debt is under. If more than 5 unsecured debts, attach a separate sheet.

Line #	Description of Credit Card or Other Unsecured Debt	Total Amount owed	Whose Name is on the Account? You, Your Spouse/Domestic Partner or Both
1.		\$	
2.		\$	
3.		\$	
4.		\$	
5.		\$	
6.		\$	
Total Unsecured Debt (add lines 1-6)		\$	

CERTIFICATION

Attorney Information: Complete the following sentences:

1. I (have/have not) _____ retained an attorney for this case.
2. As of the date of today, the attorney has been paid a total of \$ _____ on my behalf.
3. I have a credit with my attorney in the amount of \$ _____.
4. I currently owe my attorney a total of \$ _____.
5. I owe my prior attorney a total of \$ _____.

IMPORTANT: Read the following paragraphs carefully and initial each one.

 X I swear or affirm under penalty of perjury that I have read and followed all instructions in completing this Financial Disclosure Form. I understand that, by my signature, I guarantee the truthfulness of the information on this Form. I also understand that if I knowingly make false statements I may be subject to punishment, including contempt of court.

_____ I have attached a copy of my 3 most recent pay stubs to this form.

_____ I have attached a copy of my most recent YTD income statement/P&L statement to this form, if self-employed.

_____ I have not attached a copy of my pay stubs to this form because I am currently unemployed.

 P. M. G.
Signature

 1/31/20
Date

CERTIFICATE OF SERVICE

I hereby declare under the penalty of perjury of the State of Nevada that the following is true and correct:

That on (date) 1/31/2020, service of the General Financial Disclosure Form was made to the following interested parties in the following manner:

☒ Via 1st Class U.S. Mail, postage fully prepaid addressed as follows:

☐ Via Electronic Service, in accordance with the Master Service List, pursuant to NEFCR 9, to:

☐ Via Facsimile and/or Email Pursuant to the Consent of Service by Electronic Means on file

herein to: _____

Executed on the 31 day of January, 2020.

Rosa May
Signature

Heather L. Lumin
CLERK OF THE COURT

CSERV

Name: Rosa Martinez
Address: 5005 Losee Rd
#3019 North Las Vegas NV 89081
Telephone: 702-353-9271
Email Address: rose-n-vegas@yahoo.com
In Proper Person

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Ignacio Avila
Plaintiff,

vs.

Rosa Martinez
Defendant.

CASE NO.: D. 515892
DEPT: _____

CERTIFICATE OF SERVICE

I, (name of person who served the document) Rosa Martinez,
declare under penalty of perjury under the law of the State of Nevada that the following is true
and correct. That I served the: (check all that apply)

- ☒ Motion ☐ Answer ☒ Financial Disclosure Form
☐ Opposition ☐ Reply ☐ Notice of Entry of Judgment / Order / Decree
☐ Other: _____

In the following manner: (check one)

- ☒ **Mail:** By depositing a copy in the U.S. Mail in the State of Nevada, postage prepaid, on
the (day) _____ of (month) _____, 20__ addressed to:

(Print the name and address of the person you mailed the document to)

Ignacio Avila
1214 Emerald Stone Ave

N. Las Vegas, NV 89081

- ☐ **Electronic:** Through the Court's electronic service system on (date) _____
at (time) _____ ☐ a.m. ☐ p.m.

DATED this 31 day of Jan, 20__

Submitted By: (Signature) ▶

Rosa Martinez