

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROSIE MARTINEZ; AND HENRY
OLIVA,

Appellants,

v.

IGNACIO AVILA, JR.,

Respondent.

Electronically Filed
Oct 14 2021 05:23 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.: 83023

District Court No.: D-15-515892-C

**APPEAL FROM FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
ORDER**

Eighth Judicial District Court of the State of Nevada

In and for the County of Clark

THE HONORABLE NADIN CUTTER

DISTRICT COURT JUDGE

RESPONDENT'S APPENDIX – VOL. 2

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CERTIFICATE OF SERVICE

I, an employee of McFarling Law Group, hereby certify that on the 14th day of October, 2021, I served a true and correct copy of this Respondent's Appendix (VOL. 1-2) as follows:

☒ via the Supreme Court's electronic filing and service system (eFlex):

Fred C. Page, Esq.
Fpage@pagelawoffices.com

/s/ Alex Aguilar
Alex Aguilar



R

Rosie



Can you show me the 60 inch mount please

2:45 PM

It's this one I still have to take it down from here

3:14 PM

May 6, 2017, 1:13 PM

How's my baby and Alan

1:13 PM

Good. Oh and about tvs I already found someone that could do it thank you anyways!

1:22 PM

Yea I just don't trust you it's funny how your Roommate was texting me that day we talked on Tuesday asking me questions and all of a sudden you wanted my help to mount some tv's ? Yes I could help

1:25 PM



Text Message



RA000251



MLG000292



Rosie



you but if it's just to take care of kids that's all.

What? What did he tell you?

1:26 PM

He's just mad cuz im leaving

1:26 PM

You should know come on Rosie you went with him on Thursday I even asked baby who was driving he mentioned him. And look how I found out where you live baby also mentioned it and I didn't even know you moved out smh! It's cool though he was just asking me questions I didn't respond but kept on messaging me so I asked him what he wanted I didn't understand his messages though just ignored him.

1:29 PM



Text Message



RA000252



MLG000293



R



Rosie

On Thursday he just got on my car I was so mad

1:29 PM

I didn't tell you I moved out cuz I haven't moved completely but I was gonna tell you

1:33 PM

I just wanted you to help me cuz I didn't want nobody else

1:46 PM

said I don't trust you if need help with the kids for take care of them while settle in" then ok I'll go you up to pick up kids he's mad right now I know what to tell you. thought it was weird the when I talk to you he was g me asking me

Like I you n me to you " meet but if don't Just t fact w textin



RA000253

MLG000204



Rosie



questions that's when I felt something is going on

Ok it's ok I said

2:00 PM

Thanks for letting me know

2:00 PM

Yea thanks for letting me know about your address too and you moving out as well oh another thing I still haven't heard from you about me taking baby to pre school for 1 hr Monday Wed Friday. Even though you for you to settle in has nothing to do about baby being in pre school but anyways registration is around the corner and I would really like for us either to go or I can go take her I can pay for it too so don't worry about that.

2:03 PM



Text Message



RA000254



MLG000295



R



Rosie

Well nothing is going on im just moving that's it and he doesn't even know were I live

2:03 PM

Ok we could talk about it next time I see you

2:13 PM

Ok

2:14 PM

May 9, 2017, 1:43 PM

How'd Alan and baby

1:43 PM

May 12, 2017, 10:48 AM

12 at shell?

10:48 AM

May 31, 2017, 11:41 AM

What time did you want her back

11:41 AM



Text Message



RA000255



MLG000296



R

Rosie



May 31, 2017, 1:03 PM

What time did she eat

1:03 PM

10

1:52 PM

K

1:53 PM

May 31, 2017, 3:42 PM

Can u bring baby to apmt pls
cuz they're installing the alarm
n they're taking a long time

3:42 PM

I can I'm almost at shell

3:48 PM

Be there as soon as I can

3:51 PM

Is baby ok? Should I go take
her from you and take her to dr
since you smashed her foot
with the door? And don't you
ever attack me like that you

4:29 PM



Text Message



RA000256



MLG000297



Rosie



Jun 29, 2017, 11:41 AM

Might be there alil late like
around 1215

11:41 AM

Ok

11:46 AM

She hasn't really ate much

12:24 PM

Ok

12:32 PM

I was wondering since court is
taking a while if you and I can
take a DNA of Alan tomorrow
just so his grandma and
grandma meet him since they
will be here all next week and I
also want to see him more
even if its just for a couple of
hrs. I know I did do a DNA on
january of this year but you
say you don't believe me and

12:38 PM



Text Message



RA000257



MLG000298



Rosie



say you don't believe me and to make things easier let's go take it tomorrow and results could be in next week if we could just pls take a DNA so you know I'm not lying please?

How long does it take cuz I don't want to take kakis with me

12:51 PM

Like 10 min if you want I can pick you up

12:53 PM

Ok

12:54 PM

Thank you

12:54 PM

Jun 29, 2017, 2:37 PM

What time did you want me to take baby to you

2:37 PM



Text Message



RA000258



MLG000299



Rosie



K thanks

11:27 AM

Jul 19, 2017, 1:42 PM

How's Alan doing

1:42 PM

Jul 19, 2017, 2:48 PM

Good

2:48 PM

Jul 20, 2017, 12:10 PM

How's Alan doing?

12:10 PM

Good how's Jazlynn?

12:44 PM

Good

12:58 PM

Can I see Alan?

12:58 PM

Please

1:19 PM



Text Message



RA000259



MLG000240



R



Rosie

Can't today sorry were doing some stuff buying groceries and stuff and they're helping me out.

1:25 PM

If you work tonight let him stay with me I'll take him to you tomorrow just so I can spend time with him and baby please?

1:30 PM

No I don't n I'm gonna take them bowling cuz they been wanting to go.

1:36 PM

N tomorrow I'm gonna take them to Cowabanga Bay

1:42 PM

K so when can I see my son ?

1:54 PM

Jul 20, 2017, 3:52 PM



Text Message



RA000260



MLG000241



Rosie



Jul 20, 2017, 3:52 PM

Soon gotta go cuz I got a flat
tire

3:52 PM

Jul 21, 2017, 12:23 PM

How's Alan doing?

12:23 PM

Jul 22, 2017, 10:53 AM

Did you want baby today or
tomorrow?

10:53 AM

Today please if you can thanks

11:17 AM

What time

11:18 AM

Well whenever you can 1 or 2

11:25 AM

K can I see Alan for like 10 min
at least pls?

11:32 AM



Text Message



RA000261



MLG000212



R

Rosie



K

11:33 AM

I'm going to take some tennis
so he can try on

11:38 AM

K

11:39 AM

I'll be at shell at 1

12:10 PM

I'm here

12:50 PM

K hold on a lil

1:02 PM

Thank you for letting me see
him I need a favor I didn't see
his size shirt and shorts can
you pls text me his size pls

1:30 PM

6 for both

1:31 PM

Even for pants?

1:31 PM



Text Message



RA000262



MLG00023



Rosie



Even for pants?

1:31 PM

Yea

1:32 PM

Did you test the key I gave you for your apt because I don't know if that was yours can you let me know pls

1:33 PM

K ill test it

1:34 PM

What

1:34 PM

The key

1:34 PM

Why did you want key back?

1:35 PM

Just cuz your not gonna need it n u might loose it and yea it's the right one

1:53 PM

K

1:54 PM



Text Message



RA000263



MLG00024



Rosie



Jul 24, 2017, 2:30 PM

Can I see Alan and baby tomorrow after work pls?

2:30 PM

They're good. On Wed yea ?

3:13 PM

O ok

3:14 PM

Jul 25, 2017, 1:50 PM

How's my baby and Alan

1:50 PM

Good

1:57 PM

Jul 25, 2017, 7:10 PM

Hey I was wondering if I can get our baby and Alan for the 4th of August through the 10th of August I was going to take some vacation from work if it's ok I would appreciate it.

7:10 PM



Text Message



RA000264



MLG000215



R

Rosie



Jul 26, 2017, 10:04 AM

Can I pick Alan and baby at 12?

10:04 AM

Jul 26, 2017, 11:27 AM

1230

11:27 AM

K

11:41 AM

They just woke up

11:44 AM

Jul 26, 2017, 3:14 PM

We are on our way

3:14 PM

Can u bring them to apmt please!

3:15 PM

Ok

3:16 PM



Text Message



RA000265



MLG000266



Rosie



I'm here

3:46 PM

They both are already

3:58 PM

*ate

4:01 PM

K thanks

4:02 PM

Jul 27, 2017, 10:03 AM

Can I see Alan and baby today?

10:03 AM

Jul 27, 2017, 11:58 AM

Just saw your text but tmrw ok cuz were going to the pool right now

11:58 AM

Ok

12:02 PM

Am I going to get them for this weekend?

12:02 PM



Text Message



RA000266



MLG000267



Rosie



When is registration for Alan and baby? I would like to go with you and also I want to know the name of his and her school pls thanks

1:55 PM

Ok

1:56 PM

In August they're gonna tell me if baby got accepted in preschool cuz it's like a lottery I'll let you know k

1:59 PM

K thank you what about Alan?

1:59 PM

Alan well he's still going to the same school to kinder

2:01 PM

What's the name of the school?

2:02 PM

John tartan

2:05 PM



Text Message



RA000267



MLG000238



Rosie



weekend.

Can u give them back to me Saturday? Like at 6pm it's cuz Sunday I'll be leaving in the morning to take them to California adventure and Ranging Waters

12:49 PM

How you never texted me about next week when I asked to see if I could get them and because you never answered I canceled my days vacation

12:51 PM

So yea I'm sorry but I already had plans til Sunday with our kids and you need to give me a two week notice I'm not trying to get back at you but I also wanted to spend more time with them.

1:01 PM



Text Message



RA000268



MLG000249



Rosie



Ok you can stay with baby I
don't want to argue I'll be back
Friday

1:14 PM

I'll give her to you Saturday n
about Alan I'll just wait for the
court papers

1:14 PM

I'm not arguing but look we
both confirmed he was mine I
had to take two dna and you
even said it yourself that this
is the reason why you moved
out for me to see kids more
and look now you want to wait
for court papers for me to see
Alan? Wow! I can't believe you
using Alan to hurt me and him
mostly you hurting my kids
Alan and baby.

1:18 PM

You will be back Friday when?

1:19 PM



Text Message



RA000269



MLG000220



Rosie



But Rosie I had plans
tomorrow you said I can have
them both

1:20 PM

No I'm being so nice n letting
you see him even though you
already send me to court.
Maybe I'll just wait for those
papers instead. N we can stop
arguing

1:55 PM

for once. You took baby last
week! For 4 days n I didn't say
anything right n i don't
remember you telling me 2
weeks in advance but that's
ok and for

1:55 PM

your information I wasn't
gonna go cuz I didn't have
money but my brother is
paying for my hotel he just

1:55 PM



Text Message



RA000270



MLG000221



Rosie



paying for my hotel he just told me today. Oh n about your vacation I was t

hinking about it cuz I don't think Alan is ready to spend the night specially so many days today he told me he doesn't want to go no more so I just wante

1:55 PM

d him to go lil by lil till he feels good. That's it.

1:55 PM

How often do you let me see him Rosie? And last week reason why you let me see our daughter because I didn't get to see our son on my bday so to make up for you decided to let me take baby and also they both didn't want to leave yesterday when I dropped



Text Message



RA000271



MLG000222



Rosie



both didn't want to leave yesterday when I dropped them off don't you think if he didn't want to come he would not go with me? Also you are hurting us because you don't let me spend more time with not just him but our daughter as well. And by you waiting for court papers and you know he's my son why hold him against me if you know you are hurting him and me. So please and I'm begging you please stop using the kids to hurt us.

2:04 PM

Ha think wherever you want ok I'm not gonna text back nomore cuz I don't have time to argue with you.

2:19 PM



Text Message



RA000272



MLG000223



R



Rosie

So tomorrow can I get the kids at 12? Please and if I can't get my son can at least see him for like a couple of hrs or until you go to work? Pls?

2:24 PM

Jul 28, 2017, 10:33 AM

She'll at 12?

10:33 AM

K

11:24 AM

Can you let me take Alan for at least a couple of hrs? Pls?

11:25 AM

Jul 29, 2017, 1:12 PM

How's Alan doing?

1:12 PM

Good

1:16 PM



Text Message



RA000273



MLG000224



Rosie



Jul 31, 2017, 1:44 PM

How's my baby and Alan doing?

1:44 PM

Jul 31, 2017, 4:07 PM

Good

4:07 PM

Aug 1, 2017, 10:46 AM

I'll be at shell at 12 ... Can I see Alan for a couple of hrs pls

10:46 AM

Aug 1, 2017, 11:48 AM

What? I'm not in Vegas I told you I was leaving I'll be back Friday

11:48 AM

No you didn't tell me you were leaving to Cali you said you



Text Message



RA000274



MLG000225



R



Rosie

had to leave on Sunday but
that's it and I had said no to
you

So you left the state without
my permission

11:54 AM

I told you I was gonna wait for
baby to leave read your msgs

12:00 PM

Leave where though it doesn't
say anywhere

12:00 PM

So read your messages you
did mention you will be back
and I said I took time off
because you were going to be
back this coming Friday but I
said no and also too I had said
no

12:02 PM

Ok well I'll be back Friday. N
you saw baby last week n the

12:04 PM



Text Message



RA000275



MLG000226



Rosie



OK well I'll be back Friday. IN
you saw baby last week n the
week before that more than
you were suppose too

12:04 PM

Is there a problem me seeing
her more?

12:05 PM

No but I guess you have one
wth me

12:05 PM

Because we both agreed
when we signed the
settlement that I can see our
daughter more and you said
yes

12:06 PM

How is that IF you count the
days of the month how many
times I see her and how many
times you see her then you
would know who has her more

12:06 PM



Text Message



RA000276



MLG00027



R

Rosie



How about I get him at 4 and take him to you at 6 because I didn't see him Friday pls

1:15 PM

No I'm just waiting for baby to leave I was suppose to leave earlier

1:16 PM

Well if you want let me go pick him up at 2 and I'll take you both baby and Alan at 4?

1:18 PM

K

1:19 PM

I'm here

1:50 PM

Jul 30, 2017, 3:57 PM

I'm here

3:57 PM

Jul 31, 2017, 1:44 PM



Text Message



RA000277



MLG000228



Rosie



Aug 2, 2017, 12:54 PM

How's my baby and Alan
doing?

12:54 PM

Aug 3, 2017, 1:15 PM

How's my baby and Alan
doing?

1:15 PM

Aug 4, 2017, 10:15 AM

How's my baby and Alan
doing? Can I see them today
pls?

10:15 AM

Aug 5, 2017, 11:35 AM

How's my baby and Alan
doing? Can I go see them and
if it's ok for them to stay with
me? Pls

11:35 AM



Text Message



RA000278



MLG000229



R

Rosie



No I'll be at 12 at shell and pick her up at 6 like I told the nice officer

11:59 AM

I'll there like around 1220

12:01 PM

And you texted me you would be here Friday

12:01 PM

Ok well I'll be back Friday. N you saw baby last week n the week before that more than you were suppose too

12:03 PM

That's your text

12:03 PM

I'm here

12:19 PM

Can she stay with me ?

12:30 PM

Aug 5, 2017, 3:16 PM

No sorry I have to pick her up



Text Message



RA000279



MLG000230



Rosie



Aug 8, 2017, 10:58 AM

Can I see Alan and baby today at around 12 pls?

10:58 AM

I'll be waiting at shell for baby and Alan I really want to see them

11:47 AM

Aug 9, 2017, 9:41 AM

Can I see Alan and baby today pls? Can I go to Alan meet the teachers this Friday? I would really like to go is it at1?

9:41 AM

Aug 9, 2017, 2:56 PM

How's my baby and Alan doing?

2:56 PM

Aug 10, 2017, 10:04 AM



Text Message



RA000280



MLG000231



Rosie



Aug 10, 2017, 10:04 AM

Hey can I pls see my baby and Alan pls? I really want to see my baby and Alan

10:04 AM

Can I pick them up at 12 today.?

10:04 AM

Aug 10, 2017, 11:19 AM

I also wanted to take them with their auntie house because it's her bday today

11:19 AM

Aug 11, 2017, 10:23 AM

I'll pick up baby at 12 and can I go to meet the teacher with Alan?

10:23 AM

Aug 11, 2017, 11:58 AM



Text Message



RA000281



MLG000232



Rosie



Aug 11, 2017, 11:58 AM

I'm here

11:58 AM

So are you going to let me
Alan or let me meet his
teachers?

12:05 PM



12:06 PM



Text Message



RA000282



MLG000233



Rosie



And you telling me you want me to wait for court? Why?

12:06 PM

Aug 12, 2017, 2:00 PM

How's Alan doing what other school supplies does he need?

2:00 PM

Aug 13, 2017, 7:16 PM

How's Alan doing? Hey are you going to let me see Alan on his first day of school? Or are you going to let me miss another year knowing that he is mine

7:16 PM

Aug 14, 2017, 2:17 PM

How is my baby and Alan doing? How was his first day

2:17 PM



Text Message



RA000283



MLG000234



R

Rosie



Aug 23, 2017, 10:15 AM

Sorry but your gonna have to pick up the kids tomorrow I forgot we have something to do today.

10:15 AM

Tomorrow at 12 then?

10:16 AM

K

10:27 AM

But you know I was really looking forward to see our kids and this is why I wanted to take you to court, it's been 5 days since I haven't seen them but you and I agreed before we do a settlement that I would see my daughter and work things out for our child but now you know why we going to court. I understand

10:40 AM



Text Message



RA000284



MLG000235



R



Rosie

Ok this is the reason why I don't text you back cuz I don't want to argue. Don't text me no more n I'll see you Friday @12@shell.

11:15 AM

We are not arguing I'm making a point to you because we did agreed for today but all of a sudden you changed everything on me which is not the first time but all I'm saying IS why are you using the kids against me? They did nothing wrong if you are upset at me don't use the kids to hurt me or them.

11:18 AM

Your the one that wants to do everything strictly by court then that's what I'm doing following court orders I don't

11:24 AM



Text Message



RA000285



MLG000236



Rosie



then that's what I'm doing
following court orders I don't
want problems anymore or get
the co

11:24 AM

ps send to me. That's what
happens to me for being nice
all the time n letting you see
her way more that you were
suppose to.

11:24 AM

Rosie, this is not arguing. I did
the arrangement with you at
court because you said you
where going to let me see my
baby more than the schedule
dates. I trusted you, but we are
going through this again. You
only let me see them when
you want. When I asked you if
I can take the DNA with Alan
you said once you knew he
was mine you where going to

11:33 AM



Text Message



RA000286



MLG000237



R



Rosie

you want. when I asked you if I can take the DNA with Alan you said once you knew he was mine you where going to let me see him little by little and we both agreed. Since you got the results of the DNA (June) I have only seen him 3 times. One time was like 2 hours or less. This is why I'm taking you to court. All I want is to see and spend time with my kids.

11:33 AM

Well im still waiting for the papers since you told me you send me to court looong time ago. Oh and you agreed to soooo many things too and didn't do it b

11:38 AM

ut yea you want me to.

11:38 AM



Text Message



RA000287



MLG000238



Rosie



My attorney is getting everything ready. Don't be surprised to get served soon. What did I agree to? To my understanding I've done everything to comply with the court order. Do you still have a copy of the court order so you can go through it again?

11:43 AM

I've asked you twice about Jazlynn's school. Till today I haven't heard anything. I want to be able to enroll her in special activities like dancing classes, gymnastics etc. and I would like to enroll Alan as well. One more thing I requested the days off for October 6th -9th I want to take the kids to Disneyland. I'm giving you time to think

11:45 AM



Text Message



RA000288



MLG000239





Rosie



take the kids to Disneyland.
I'm giving you time to think
about it. I know that it's
important to you that Kikis
stays by himself if, you want I
can bring him with us.

Just do whatever you want n
don't tell me ok oh n that's if
you don't get the papers first.

11:48 AM

That's fine. But you didn't
answer my two questions?
And I will never stop asking
how my kids are and if I can
see them.

11:52 AM

Aug 23, 2017, 2:18 PM

Put it in paper and give it to
me oh n Alan can't go cuz he
goes to school on Monday

2:18 PM



Text Message



RA000289



MLG000240



Rosie



Huh?

2:19 PM

The dates that you want to
take Jazlynn

2:31 PM

Ok thanks

2:31 PM

Aug 24, 2017, 2:07 PM

How's my baby and Alan
doing?

2:07 PM

Aug 25, 2017, 12:47 PM

What time did she eat?

12:47 PM

930

12:48 PM

K

12:50 PM

Any update on jazlynns
school?

12:51 PM



Text Message



RA000290



MLG000241



Rosie



She didn't make it to the August list but teacher told me they're doing another one in September so hopefully they pick her.

12:53 PM

I'll let you know

12:55 PM

Why didn't she make it? Did they say why?

1:09 PM

No it's just a lottery

1:16 PM

When did you turn in the paper for jazlynn to attend in the lottery because last time you said in the month of July.

1:17 PM

No August cuz school started in August that's when they do it. I turned it in like in May

1:21 PM



Text Message



RA000291



MLG000242



R



Rosie

some pencils n crayons if you want or books so he can read.

3:07 PM

What kind of books what if you just let me take him to the library one of these days? And pencils and crayons I have for him as well.

3:09 PM

What about cloths?

3:09 PM

Ok. Clothes maybe some long sleeve shirts cuz the weather is gonna get cooler soon I already got him alot of jeans.

3:12 PM

Ok what about shoes?

3:13 PM

No he has allot like 5 new pairs

3:14 PM

Maybe later on

3:15 PM



Text Message



RA000292



MLG000243



R

Rosie



O ok what size of shoe does kikis wear?

3:15 PM

Oh n size 1 fits him alil tight now so he's gonna be a 2 now

3:16 PM

Which ones for him tight?

3:17 PM

*fit

3:17 PM

I think the gray and red are 1 and a half

3:18 PM

Yea those he told me they're too tight

3:20 PM

Hmm I did try them on though they were fine what about the black ones? And the Jordan's?

3:21 PM

Those are good maybe it's just the style is different that's why

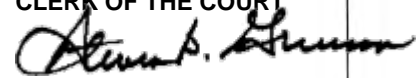
3:22 PM



Text Message



RA000293MLG000244



1 **NOAS**
2 **FRED PAGE, ESQ.**
3 Nevada Bar: 6080
4 **PAGE LAW FIRM**
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6 Las Vegas, Nevada 89113
7 Phone: (702) 823-2888
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9 E-mail: fpagelaw@pagelawoffices.com
10 *Attorney for Defendants*

11 **DISTRICT COURT, FAMILY DIVISION**

12 **CLARK COUNTY, NEVADA**

13 **IGNACIO AVILA, JR.,**

14 Plaintiff,

CASE NO.: D-15-515892-C

15 vs.

DEPT. NO.: T

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

18 Defendant.

19 **NOTICE OF APPEAL**

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

25 ///

26 ///

27 ///

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

2 DATED this 28th day of May 2021

3 PAGE LAW FIRM

4
5
6 

7 FRED PAGE, ESQ.

8 Nevada Bar No. 6080

9 6930 South Cimarron Road, Suite 140

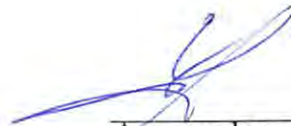
10 Las Vegas, Nevada 89113

11 (702) 823-2888

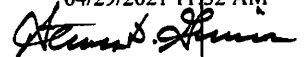
12 Attorney for Defendants/Appellants

CERTIFICATE OF SERVICE

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



An employee of Page Law Firm


CLERK OF THE COURT

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

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

IGNACIO AVILA, JR.,

Plaintiff,

vs.

ROSIE MARTINEZ and HENRY OLIVA,

Defendants.

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

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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

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

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

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

3 The Court must start with the law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **ORDERS**

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

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

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

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

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

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

24 ///

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

NOTICES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If the non-relocating parent refuses to give that consent, petition the
court for primary physical custody for the purpose of relocating.

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

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

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

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

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

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

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

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

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

17 IT IS SO ORDERED.

18 Dated this 29th day of April, 2021

19 

20 9FA DFA 73B4 7D76

21 Nadin Cutter

22 Approved as to form and content:

23 BOWEN LAW OFFICES

24 Submitted by:

MCFARLING LAW GROUP

/s/ Kimber Laux

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Attorney for Defendant,
Henry Oliva

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

You may affix my e-signature.

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

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

Good Morning,

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

Sincerely,

Kiya Jack | Legal Assistant | Paralegal



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RA000304

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Ignacio Avila, Jr., Plaintiff.

CASE NO: D-15-515892-C

7 vs.

DEPT. NO. Department T

8 Rosie Martinez, Defendant.
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 4/29/2021

15 Gayle Nathan .

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16 Jerome Bowen

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