

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

TONY MATKULAK,

Petitioners,

vs.

KOURTNEY L. DAVIS,

Respondent,

Electronically Filed
Jul 26 2021 08:40 a.m.
S.C. No.: E2150
Elizabeth A. Brown
Clerk of Supreme Court
D.C. Case No.: FV20-00559

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See *Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 898 (2001); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: SECOND Department: 12

County: WASHOE Judge: SANDRA A. UNSWORTH

District Ct. Case No.: DV20-00559

2. **Attorney(s) filing this docket statement:**

Attorneys: MARSHAL S. WILLICK, ESQ. Telephone: (702) 438-4100

Firm: WILLICK LAW GROUP

Address: **3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101**

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondent(s):

Attorney: **Kevin P. Ryan, ESQ.** Telephone: **(775) 322-5000**

Address: **Bader & Ryan, LTD**
232 Court Street
Reno, Nevada 89501

Client(s): **Kourtney L. Davis**

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): |

5. Does this appeal raise issues concerning any of the following?

- Child custody
- Venue
- Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

Proceeding to determine child support in case of unmarried parents who stipulated to joint legal and physical custody. The child support formula yielded a child support award of \$1,592.56, but the Court decided to award child support for the now-three-year-old child of \$3,500 per month – \$2,000 over the guideline sum – as well as ordering the father to pay all insurance, all medical expenses, 75% of extra-curricular expenses, and more.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- Whether it is an abuse of discretion for a court to determine that a child's "specific needs" equate to "compensation" for the parents' "gross disparity in income."
- Whether it is an abuse of discretion, amounting to the award of hidden alimony, for a court to increase a child support award by \$2,000 per month based on findings that one parent would like a nicer house and would like to work less.
- Whether the child support regulations set out in NAC 425 grant essentially unlimited discretion to a court to award child support more than double the guideline amounts.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceeding presently pending before this court which raise the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A

Yes

No, If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

Reversal of well-settled Nevada precedent (identify the case(s)):

An issue arising under the United States and/or Nevada Constitutions

A substantial issue of first impression

An issue of public policy

An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

A ballot question

N/A

If so, explain: To date, there are no significant case law interpretations of the child support regulations that replaced the prior child support statutes; this has

led to quite a bit of differing interpretations of the regulations on multiple fronts, including as to the scope of judicial discretion and what is required to vary from guideline support, from court to court throughout the state.

13. Assignment to the Court of Appeals or retention in the Supreme Court.

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

As a “simple” child support dispute, this case is presumptively assigned to the Court of Appeals, but the decision should hinge on matters of public policy and uniformity of application from court to court (see above), so it might be more appropriately retained by the Supreme Court as part of its policy-making function.

14. Trial. If this action proceeded to trial, how many days did the trial last?

One full day.

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from June 14, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order served June 24, 2021

Was service by:

Delivery

Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing. N/A

NRCP 50(b) Date of filing _____

NRCP 52(b) Date of filing _____

NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal. *See AA Primo Builders v. Washington*, 126 Nev. 578, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving motion served _____

Was service by: N/A

Delivery

Mail/electronic/fax

19. Date notice of appeal was filed: July 2, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other

NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

NRAP 3A(b)(1)

NRS 38.205

NRAP 3A(b)(2)

NRS 233B.150

NRAP 3A(b)(3)

NRS 703.376

Other(specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order: The Order Establishing Custody, Visitation, and Child Support is a final judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

- Plaintiff: Kourtney L. Davis
- Defendant: Tony Matkulak

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other: N/A

23. Give a brief description of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

The only dispute was over the child support payable; it was resolved as detailed above.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

Yes

No

25. If you answered “No” to question 23, complete the following:

(a) Specify the claims remaining pending below: N/A

(b) Specify the parties remaining below: N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)? N/A

Yes

No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment? N/A

Yes

No

26. If you answered “No” to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims.
- Any tolling motion(s) and order(s) resolving tolling motion(s).
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal.
- Any other order challenged on appeal.
- Notice of entry for each attached order.

See the following attached documents:

- Exhibit 1: Verified Petition to Establish Custody, Visitation, and Child Support; filed April 29, 2020.
- Exhibit 2: Answer to Verified Petition to Establish Custody, Visitation and Child Support; filed on May 28, 2020.

- Exhibit 3: Order Establishing Custody, Visitation and Child Support;
filed June 14, 2021.
- Exhibit 4: Notice of Entry of Order; filed June 24, 2021

VERIFICATION

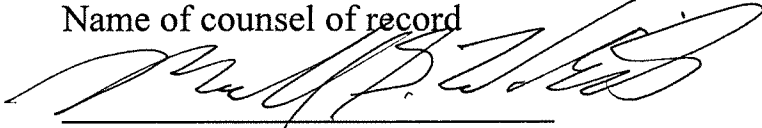
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Tony Matkulak

Name of appellants

Marshal S. Willick, Esq.

Name of counsel of record



Signature of Counsel of Record

7-22-21

Date

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d)(1), I certify that I am an employee of the WILLICK LAW GROUP and that on this 26th day of July, 2020, documents entitled *Docketing Statement - Civil Appeals* were filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorneys listed below at the address, email address, and/or facsimile number indicated below:

Kevin Ryan, Esq.
Bader & Ryan, LTD.
232 Court Street
Reno, Nevada 89501
(775) 322-5000
Attorney for Respondent

Margaret M. Crowley
121 Washington Street
Reno, Nevada 89503
(775) 233-6711
Supreme Court Settlement Judge

//s//Justin K. Johnson
An Employee of the Willick Law Group

EXHIBIT “1”

EXHIBIT “1”

EXHIBIT “1”

1 **Code: \$3609**
Kevin P. Ryan, Esq., NSB 4371
2 BADER & RYAN, LTD.
232 Court Street
3 Reno, Nevada 89501
(775) 322-5000
4 Attorneys for Kourtney L. Davis

5
6 IN THE FAMILY DIVISION
7 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF WASHOE

9
10 KOURTNEY L. DAVIS;

11 Petitioner,

12 vs.

13 TONY MATKULAK;

14 Respondent.

Case No.:

Dept. No.:

15
16 **VERIFIED PETITION TO ESTABLISH CUSTODY, VISITATION AND CHILD SUPPORT**

17 Petitioner, KOURTNEY DAVIS (“Mother”), by and through her legal counsel, Kevin P. Ryan,
18 Esq., of the law firm of Bader & Ryan, Ltd., hereby petitions this Court for an Order establishing custody,
19 visitation and child support regarding the parties’ minor child, BENNETT DAVIS MATKULAK, whose
20 date of birth is May 3, 2018 (“Bennett”). This Petition is made pursuant to NRS 125A.305 and pertains
21 to the rights and duties of Respondent, TONY MATKULAK (“Father”).

22 Mother hereby alleges as follows:

- 23 1. Mother is a resident of Washoe County, State of Nevada;
- 24 2. Father is a resident of Washoe County, State of Nevada;
- 25 3. Mother and Father were never married, but on May 3, 2018, Mother gave birth to Bennett.

26 Father is a natural parent of Bennett and his paternity is not contested;

- 27 4. Bennett was born in Washoe County, State of Nevada, and pursuant to NRS 125A.085,

28 ...

1 Nevada is Bennett’s “home state” and habitual place of residence;

2 5. At this time there is no permanent custody order regarding Bennett that has been entered
3 by any court of competent jurisdiction;

4 6. Pursuant to NRS 125A.305, this Court has jurisdiction of the parties, their minor child and
5 the subject matter herein;

6 7. Mother requests that the parties be awarded **joint legal custody** of Bennett. Mother
7 understands that joint legal custody involves having the basic legal responsibility for a child and making
8 major decisions regarding the child including, but not limited to the child’s health, education, and religious
9 upbringing. When parents have joint legal custody they must consult with each other when making major
10 decisions regarding a child’s upbringing. Rivero v. Rivero, 125 Nev. 410, 216 P.3d 213 (2009);

11 8. Mother requests that the parties be awarded **joint physical custody** of Bennett. Mother
12 understands that consistent with the holding in the case Rivero v. Rivero, 125 Nev. 410, 216 P.3d 213
13 (2009), joint physical custody means awarding physical custody of the minor child to both parents and
14 providing that physical custody be shared by the parents in such a way as to ensure the child of frequent
15 associations and a continuing relationship with both parents;

16 9. Child support should be calculated and set consistent with Nevada law including NAC
17 Chapter 425. Additionally, the parties should share the cost of Bennett’s health insurance together with
18 all of his un-reimbursed expenses for health care, dental and vision, including co-pays;

19 10. Mother should be awarded the federal dependency exemption for Bennett for the tax year
20 2020 and in all even years thereafter. So long as Father has no child support arrears, he should be awarded
21 the federal dependency exemption for Bennett in odd numbered years beginning 2021;

22 11. The parties should share the cost of all of Bennett’s agreed upon activities, and each
23 parent should be individually responsible for the cost of Bennett’s third party day care when the child is
24 in their custody; and,

25 12. Father should be ordered to pay Mother’s attorney’s fees and costs.

26 **WHEREFORE**, Mother requests the following relief:

27 1. An order establishing custody of the minor child whereby the parties are awarded joint
28 physical custody of Bennett;

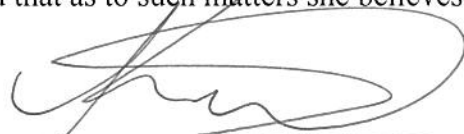
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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, KOURTNEY L. DAVIS, being first duly sworn, depose and say:

Under penalties of perjury, the undersigned declares that she is the Petitioner named in the foregoing *VERIFIED PETITION TO ESTABLISH CUSTODY, VISITATION AND CHILD SUPPORT* and knows the contents thereof; that the pleading is true of her own knowledge, except as to those matters stated on information and belief, and that as to such matters she believes them to be true.



KOURTNEY L. DAVIS

SUBSCRIBED and SWORN TO before me
this 20 day of April, 2020.



NOTARY PUBLIC



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Bader & Ryan, Ltd., and that on the date set forth below, I served a true copy of the foregoing document on the party(ies) identified below by:

- XXX Placing an original or true copy thereof in a sealed envelope, postage prepaid, placed for collection and mailing in the US Mail at Reno, Nevada.
- Personal delivery.
- Facsimile to the following number: () .
- Federal Express or other overnight delivery.
- Reno Carson Messenger Service.
- Certified Mail Return Receipt Requested.
- XXX Electronic Service via ECF System.

addressed to:

Shawn B. Meador, Esq.
Woodburn & Wedge
6100 Neil Road, Ste. 500
PO Box 2311
Reno, NV 89505

DATED this 21 day of April, 2019.

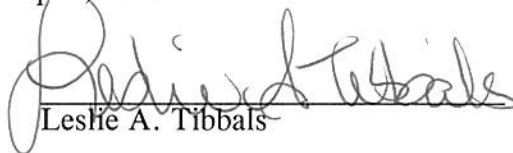

Leslie A. Tibbals

EXHIBIT “2”

EXHIBIT “2”

EXHIBIT “2”

1 SHAWN B MEADOR
NEVADA BAR NO. 338
2 WOODBURN AND WEDGE
6100 Neil Road, Suite 500
3 Post Office Box 2311
4 Reno, Nevada 89505
Telephone: (775) 688-3000
5 Facsimile: (775) 688-3088
Attorneys for Defendant
6 smeador@woodburnandwedge.com

7
8 IN THE FAMILY DIVISION
IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE

10 KOURTNEY L. DAVIS ,

11 Petitioner ,

CASE NO . FV20-00559

12 v .

DEPT. NO . 12

13 TONY MATKULAK ,

14 Respondent .

15
16 **ANSWER TO VERIFIED PETITION TO ESTABLISH CUSTODY, VISITATION**
17 **AND CHILD SUPPORT**

18 As and for his Answer to the petitioner's Verified Petition to Establish Custody,
19 Visitation and Child support, respondent, Anthon "Tony" Matkulak, admits, denies and
20 affirmatively alleges as follows:

- 21 1. Admits the allegations contained in paragraphs 1, 2, 3, 4, and 5.
- 22 2. Answering paragraph 6, affirmatively alleges that said paragraph contains a
23 statement of law rather than allegation of fact, to which no response is required.
- 24 3. Answering paragraph 7, admits that the parties should share joint legal custody
25 of their minor son.
- 26 4. Answering paragraph 8, admits that the parties should share joint physical
27 custody of their minor son.

CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Answer to Verified Petition to Establish Custody, Visitation and Child

Support

on the party set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial Court E-Filing
- Federal Express or other overnight delivery.

addressed as follows:

X Kevin P. Ryan, Esq.
232 Court St.
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 28 day of May, 2020.



Kelly Albright, Paralegal

EXHIBIT “3”

EXHIBIT “3”

EXHIBIT “3”

1 Code:
2
3

4 IN THE FAMILY DIVISION
5 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE

7
8 KOURTNEY L. DAVIS,

9 Petitioner,

Case No. FV20-00559

10 vs.

Dept. No. 12

11 TONY MATKULAK,

12 Respondent.
13 _____/

14
15 **ORDER ESTABLISHING CUSTODY, VISITATION AND CHILD SUPPORT**

16 This matter came before the Court on March 11, 2021, for trial by audio visual means
17 pursuant to the Administrative Order entered March 16, 2020, and Nevada Supreme Court Rule
18 Part IX-B. on the *Verified Petition to Establish Custody, Visitation and Child Support*, filed by
19 Petitioner, Kourtney L. Davis (Ms. Davis) on April 29, 2020. Ms. Davis was present with counsel,
20 Kevin P. Ryan, Esq, of Bader & Ryan, LTD. Respondent, Tony Matkulak (Mr. Matkulak) was
21 present with counsel, Shawn B Meador, Esq. of Woodburn & Wedge.

22 Following a day long trial, in which the Court heard the testimony of the parties, reviewed
23 the exhibits admitted into evidence, including the report prepared by Michelle L. Salazar,
24 CPA/ABV, CVA, DFE, CDFA admitted by stipulation; and having heard the arguments of
25 counsel, this Court issues the following Findings of Fact, Conclusions of Law and Orders:

26 ///

27 ///

1 **FINDINGS OF FACT; CONCLUSIONS OF LAW**

2 **Stipulated Findings of Fact**

3 1. The parties are unmarried and the parents of Bennett Davis Matkulak, born May 2, 2018.

4 2. This Court has the necessary UCCJA, UCCJEA and PKPA initial and continuing
5 jurisdiction to enter orders regarding child custody and visitation regarding the minor child, and
6 hereby exercises said jurisdiction.

7 3. Mr. Matkulak is the biological father of the minor child pursuant to NRS 126.053.

8 4. Based upon the agreement of the parties, the parties shall share joint legal custody of
9 Bennett.

10 5. Based upon the agreement of the parties, the parties shall share joint physical custody of
11 Bennett. Given Bennett’s young age, the current timeshare is a 2-2-3 schedule.

12 6. Based upon the agreement of the parties the final order will include a non-disparagement
13 clause.

14 7. This Court has jurisdiction over the parties and subject matter of this action to enter
15 orders regarding the minor children.

16 8. The parties are entitled to a judgment and decree of custody and visitation finally
17 resolving each of these issues.

18 **Contested Issues**

19 The contested issues presented at trial relate to the appropriate holiday schedule; child
20 support; childcare costs; extracurricular costs; who should provide insurance coverage for Bennett
21 and payment of uncovered medical costs, dependent claim; and attorney’s fees.

22 Holiday Schedule

23 Ms. Davis presented a holiday schedule that was unopposed by Mr. Matkulak, as such Ms.
24 Davis’s proposal is adopted by the Court as being in the best interest of the minor child.¹

Holiday	Odd Years	Even Years
Thanksgiving	Mother	Father

27 ¹ In establishing a holiday schedule, the Court did not analyze each best interest factor, rather the Court relies on NRS
28 125C.0035(4)(d), without an established holiday schedule, there is a greater likelihood of conflict between the parties
in deciding how to share holidays and special days. A further analysis of the best interest factors was not completed
in light of the fact that the proposed holiday schedule was a very standard schedule.

1	Christmas	Father	Mother
2	Spring Break	shared	shared
3	Easter	Mother	Father
4	Bennett's Birthday	Father	Mother
5	Mother's Day	Mother	Mother
6	Memorial Day	Mother	Father
7	Father's Day	Father	Father
8	4 th of July	Mother	Father
9	Labor Day	Father	Mother
10	Fall Break	Father	Mother
11	Halloween	Mother	Father

12 Thanksgiving: Until Bennett begins school, the holiday will begin on the Wednesday
13 before Thanksgiving at 4:00 p.m. until the Sunday following Thanksgiving at 4:00 p.m. Once
14 Bennett begins school, the holiday will begin when school is released before Thanksgiving until
15 Bennett is returned to school on the Monday following Thanksgiving.

16 Christmas: Until Bennett begins school, Christmas will be defined as from 9:00 a.m. on
17 December 24th until noon on December 26th. The parent who does not have Christmas will have
18 Bennett from noon on December 26th until noon on December 28th. Once Bennett begins school,
19 the parent entitled to Christmas will be entitled to the first half of Bennett's Break from school.
20 This half of the break will include Christmas Eve and Day. The other parent will be entitled to
21 second half of the break.

22 Spring Break: Once Bennett is in school, so long as Spring Break is two weeks long, the
23 break will be equally divided between the parties with the first week going to the parent whose
24 custody schedule falls on the first weekend of the break until 9:00 a.m. on the following Friday.
25 The second week will be defined from 9:00 a.m. on the middle Friday of the break until 9:00 a.m.
26 on the final Friday of the break.

27 Easter: The parent entitled to Easter shall have the minor child from 4:00 p.m. on the
28 Saturday before Easter until 1:00 p.m. on Easter Sunday. The other parent shall have the child

1 from 1:00 p.m. on Easter Sunday until 9:00 a.m. the Monday following.

2 Bennett's Birthday: Birthday visitation shall be defined as from 9:00 a.m. on Bennett's
3 birthday to 9:00 a.m. the day following.

4 Mother's Day/ Father's Day: Mother's Day/Father's Day shall be defined as the Friday
5 before Mother's Day/Father's Day from 9:00 a.m. until 9:00 a.m. on the Monday following
6 Mother's Day/Father's Day.

7 Memorial Day/ Labor Day: The party entitled to this holiday will have the minor child
8 9:00 a.m. on the Friday before the holiday until 9:00 a.m. on the Tuesday following the holiday.

9
10 4th of July: Custody shall begin on July 3rd at 9:00 a.m. until July 5th at 4:00 p.m.

11 Fall Break: Once Bennett is in school the parties will alternate who has Bennett for this
12 school break. This break is defined as from when Bennett is released from the school proceeding
13 the break until he is returned to school following the break.

14 Halloween: This holiday shall be defined as from 4:00 p.m. on October 31st until 9:00
15 a.m. on November 1st.

16 Vacation Time: Each parent shall have the right to 14 days of custody to be taken in two
17 blocks of not more than seven consecutive days, for the purpose of vacation, during the calendar
18 year, as long as the vacation time does not interfere with the holiday schedule set forth above,
19 unless agreed to by the parents. The party who wishes to exercise his/her vacation time, shall give
20 the other party notice, in writing, a minimum of 30-days prior to the scheduled vacation time. In
21 the event there is a conflict between the vacation time requested, in even years Father will have 1st
22 choice and in odd years Mother will have 1st choice. The parent exercising vacation time shall
23 notice the other parent of the vacation location, duration, and provide contact information
24 regarding where Bennett will be staying. If either parent does not exercise his/her 14 days of
25 vacation time during the calendar year, those days are forfeited.

26 Each party are entitled to two vacation periods of up to seven days for each period. If a
27 parent elects to take a vacation shorter than seven days, that parent forfeits the additional days.
28 For example, if a parent takes one vacation for 5 days, he/she may not add the other two days to

1 his/her second vacation block.

2 Telephone Access: Each party shall have the right to make one phone call/facetime call to
3 Bennett when Bennett is in the custody of the other parent. Parents shall keep these calls within
4 reasonable hours and for a reasonable duration, during Bennett's normal waking hours. Bennett
5 may contact the non-custodial parent anytime he wants.

6 Child Support

7 Child support in this case is governed by NAC 425.

8 As the parties are sharing joint physical custody of Bennett, the parties are both "obligors."
9 *NAC 425.037.*

10 "It is presumed that the basic needs of a child are met by a child support obligation
11 established pursuant to the guidelines set forth in this chapter, however, this presumption may be
12 rebutted by evidence that the needs of a particular child are not met or are exceeded by such a child
13 support obligation." *NAC 425.100(2).* Basic needs are not defined in NAC 425.²

14 While Mr. Matkulak questioned the amount that Ms. Davis was capable of earning, in his
15 trial statement, he agreed to use her claimed gross monthly income of \$5,144 to calculate her child
16 support obligation. Ms. Davis works two jobs to earn this GMI. Further her GMI includes rental
17 income. $\$5,144 \times 16\% = \823.04 per month.

18 Ms. Davis asserted Mr. Matkulak's GMI was \$38,240. Mr. Matkulak stated his average
19 GMI was \$38,392.42.³ This figure was used to calculate his child support obligation.

20 $\$6,000 \times 16\% = \960

21 $\$4,000 \times 8\% = \320

22 $\$28,392.42 \times 4\% = \$1,135.70$

23 $\$960 + \$320 + \$1,135.70 = \$2,415.70$ per month.

24 In accord with NAC 425.115(3), Mr. Matkulak's owes Ms. Davis \$1,592.56 per month as

25 _____
26 ² In NRS Chapter 159A.186, basic needs of a child are defined to include, without limitation, "food, shelter, clothing
and medical care." However, this guardianship definition does not assist the Court in determining what basic needs
means in the context of the NAC as medical support is carved out into a separate determination. *See NAC 425.135.*

27 ³ In his trial statement Mr. Matkulak stated, "After filing his most recent financial disclosure Father discovered the
need for some modest corrections to his 2020 income." Mr. Matkulak states his financial disclosure forms reflect his
28 2020 was \$34,082.91 per month as compared to \$38,392.42 per month; a difference of \$4,309.51 per month. This
modest error equates to approximately 85% of Ms. Davis's gross monthly income of \$5,144.

1 and for child support of Bennett. ($\$2,415.70 - \$823.04 = \$1,592.56$).

2 Mr. Matkulak asserted that Ms. Davis's financial disclosure form reflected she pays \$787
3 for Bennett's direct expenses, these direct expenses are listed as \$468 for childcare; \$85 for
4 clothing; \$131 for entertainment, gifts, and toys; \$53 for half the cost of swimming lessons; and
5 \$50 for diapers and wipes. Thus, his argument is that Bennett's basic needs are amply provided
6 for with the payment of \$1,592.56 per month in child support. However, these direct expenses do
7 not include food or shelter. Of the personal expense schedule set forth in her financial disclosure
8 form, Ms. Davis pays the sum of \$1,950 for rent for the residence Bennett lives in half the time;
9 she pays \$206 per month for utilities; she pays \$550 per month for food; and she pays \$303 in auto
10 expenses.⁴ These expenses are incurred in part to assure that Bennett's basic needs for food and
11 shelter are met and that he can be transported to and from childcare, visitation exchanges and
12 swimming. The point is that Bennett's basic needs go well beyond his direct expenses.

13 "If the court establishes a child support obligation that is greater or less than the child
14 support obligation that would be established pursuant to the guidelines set forth in this chapter, the
15 court must (a) Set forth findings of fact as the basis for the deviation from the guidelines; and (b)
16 Provide in the findings of fact the child support obligation that would have been established
17 pursuant to the guidelines." *NAC 100(3)*.

18 Bennett is three years old. Both of the parties work full time jobs. Childcare is a necessary
19 expense. Currently the parties agree that childcare costs are \$936 per month. This Court has the
20 right to make an equitable division of the cost of childcare. Given the fact that Mr. Matkulak earns
21 7.46 times the amount per month that Ms. Davis earns and that his monthly housing expenses are
22 half of what Ms. Davis pays for housing, equity demands that Mr. Matkulak pay any and all
23 childcare costs incurred for Bennett. *See NAC 425.130*.

24 Medical support for Bennett is required, however, the Court can assess who provides and
25 pays for the premium for health insurance and who pays the uncovered amounts. *NAC 425.135*.

26
27
28 ⁴ Mr. Matkulak does not pay rent or a mortgage, his housing expenses are property taxes of \$636.63 per month. He
pays an HOA of \$40 per month and house insurance in the amount of \$112.74 for a total housing expense of \$789.37.
He pays \$483 in utilities and \$600 per month in yard care. He pays \$1,800 per month in food expenses. His direct
expenses for Bennett per month are \$468 for childcare; \$100 for clothing; \$150 for extracurriculars; \$237.50 for health
insurance; \$30 for transportation costs for visitation; and \$50 for other for a total of \$1,035.50.

1 Bennett is currently covered by Mr. Matkulak for a monthly cost of \$237.50. Given Mr.
2 Matkulak's superior earnings, the cost of plan, co-payments, deductibles, and maximum out-of-
3 pocket expenses shall be born solely by Mr. Matkulak. This obligation will include the cost of
4 glasses or braces if necessary in the future.

5 Ms. Davis testified that she had access to health coverage for Bennett without cost. Mr.
6 Matkulak has the right to utilize this policy so long as it is available. If Mr. Matkulak elects to
7 continue to pay for the policy he has for Bennett, Ms. Davis is encouraged to retain her policy as
8 a secondary policy for Bennett.

9 Currently Bennett is in swimming. However, as he gets older, it is likely that he will
10 participate in many more extracurricular activities. Given the vast disparity between the parties'
11 income, Mr. Matkulak shall pay 75% for all extracurricular activities, including all costs for
12 equipment and supplies necessary for said extracurricular activities and Ms. Davis will pay 25% of
13 these costs.

14 The parties shall confer with one another and either agree or disagree in advance and in
15 writing to their child's participation in any extracurricular activity. If the parties mutually agree
16 on an extracurricular activity, they shall divide the cost as set forth above and commit to getting
17 Bennett to the agreed upon activity. If the parties disagree on the child's participation in an
18 extracurricular activity, the parent insisting on the activity shall assume the entire cost of the
19 activity. Moreover, if the activity is not agreed upon, it may not unreasonably interfere with the
20 other parent's custodial time and the non-agreeing parent has no obligation to get the child to that
21 activity or any event associated therewith.

22 Neither party shall unreasonably withhold consent to an activity.

23 Ms. Davis asked the Court for an upward adjustment of child support based upon the vast
24 disparity between the parties' income. Mr. Matkulak opposed this upward adjustment based upon
25 his assertion that Bennett's needs were met with his payment of his basic child support obligation.

26 **NAC 425.150 Adjustment of child support obligation in accordance with specific**
27 **needs of child and economic circumstances of parties. ([NRS 425.620](#))**

1 1. Any child support obligation may be adjusted by the court in accordance with the
2 specific needs of the child and the economic circumstances of the parties based upon the
3 following factors and specific findings of fact:

4 (a) Any special educational needs of the child:

5 *There are no known special educational needs for Bennett.*

6 (b) The legal responsibility of the parties for the support of others;

7 *Neither party has the legal responsibility for the support of others.*

8 (c) The value of services contributed by either party;

9 *There is no indication that either party provides greater services to Bennett.*

10 (d) Any public assistance paid to support the child;

11 *Not applicable.*

12 (e) The cost of transportation of the child to and from visitation;

13 *This cost is de minimus given that both parties reside in Reno, Nevada.*

14 (f) The relative income of both households, so long as the adjustment does not exceed
15 the total obligation of the other party;

16 *Mr. Matkulak has a GMI of \$38,392.42 as compared to Ms. Davis who has a GMI of*
17 *\$5,144 and who works two jobs. Mr. Matkulak 7.46 times the amount that Ms. Davis earns*
18 *per month.*

19 (g) Any other necessary expenses for the benefit of the child; and

20 *Bennett is in child care; some extracurricular activities and he needs health insurance.*

21 (h) The obligor's ability to pay.

22 *Mr. Matkulak clearly has the ability to pay child support.*

23 Ms. Davis's monthly income is one seventh that of Mr. Matkulak's. Her monthly expenses
24 are approximately one half those of Mr. Matkulak. Ms. Davis works two jobs to earn the sums
25 she does.⁵ She is able to put aside approximately 10% of her monthly income toward her
26 retirement. Mr. Matkulak invests \$2,166.67 per month in his retirement, and he is able to save an
27 amount greater than Ms. Davis's monthly income. Ms. Davis has a housing expense of \$2,156⁶
28 as compared to Mr. Matkulak who has a housing expense of \$1,272.37.⁷ Ms. Davis testified her
home is 1,600 square feet, three-bedroom house with a 5' square rock back yard. She testified that
Mr. Matkulak lives in a 4500 square foot home with five bedrooms; and a five-car garage. She
states the home is located on an acre and one half. Ms. Davis spends one third the amount that
Mr. Matkulak does on food.

 Ms. Davis testified she wants a home for Bennett with a backyard and a security system.
She would like to not work two jobs. A review of Ms. Davis's financial disclosure reveals she is

⁵ Ms. Davis works Monday through Friday from 8:00 a.m. until 5:00 p.m. Additionally she does private coaching every Tuesday and every other Wednesday and Thursday.

⁶ Rent and utilities.

⁷ Property taxes, insurance, HOA fees and utilities.

1 living very fugally.

2 The Nevada Supreme Court held in *Barbagallo v. Barbagallo*, 105 Nev.546, 779 P.2d 532
3 (1989) the expenses related to raising a child are most likely increased in joint physical custody
4 cases. Further, in determining the appropriate amount of support a greater weight must be given
5 to the standard of living and circumstances of each parent, their earning capacities, and relative
6 financial means. Of course, this case was decided based upon NRS Chapter 125B, which has been
7 replaced by NAC Chapter 425. However, *Barbagallo* has not been overturned by the new child
8 support law. NAC Chapter 425 does not define the terms “basic needs” or “specific needs” and
9 this Court finds the language of *Barbagallo* lends guidance, “[w]hat really matters . . . is whether
10 the children are being taken care of as well as possible under the financial circumstances in which
11 the two parents find themselves.” This language confirms that the needs of a child are subject to
12 the socio-economic position of the child’s parents.

13 Another indicator that each child’s “needs” are to be determined by the Court on a case-
14 by-case basis is the language of the code, which states support is to be based “in accordance with
15 the specific needs of the child” conjunctively with the economic circumstances of the parties. *NAC*
16 *425.150*. This language leaves no doubt that this Court should analysis Bennett’s *specific needs*
17 in light of his parent’s economic circumstances.⁸

18 In this case, Ms. Davis works two jobs to earn \$5,144 per month or \$61,728 annually as
19 compared to Mr. Matkulak who earns \$38,392.42 per month or \$460,709 annually. Mr. Matkulak
20 earns better than half of Ms. Davis’s annual income in one month.

21 This Court finds Bennett’s specific needs are not met by the award of the statutory amount
22 of child support based upon the gross disparity in the parties’ income, taken in conjunction with
23 the parties’ expenses for food and shelter and as such finds Mr. Matkulak has the ability to pay
24 Ms. Davis additional support.

25 As stated above Mr. Matkulak’s base child support obligation, prior to offset, would be
26 \$2,415.70. His child support obligation after offset is \$1,592.56. Based upon this Court’s
27 equitable determination that Mr. Matkulak will pay all childcare expenses, all medical expenses

28 ⁸ The Court did take into consideration the fact that Ms. Davis has a membership at Hidden Valley Country Club and
the use of a familial vacation home in Lake Almanor when comparing the parties’ total economic circumstances.

1 and 75% of all extracurricular activities, the Court finds an upward adjustment of \$2,000 is
2 warranted to meet the specific needs of Bennett in conjunction with the parties' economic
3 circumstances.

4 Commencing July 1, 2021, Mr. Matkulak shall pay Ms. Davis the sum of \$3,500 per month
5 as and for child support. Additionally, he shall pay all childcare costs; all medical costs; and 75%
6 of all extracurricular costs.

7 Dependent Claim

8 In even numbered years Mr. Matkulak shall be entitled to the dependency credit and
9 childcare deduction for Bennett and in odd numbered years Ms. Davis shall be entitled to the
10 dependency credit and childcare deduction for Bennett.

11 Attorney's Fees

12 On January 6, 2021, Ms. Davis filed a motion for award of interim attorney's fees and
13 costs. This motion was submitted and held in abeyance pending the outcome of the trial. Ms.
14 Davis correctly stated the relevant law.

15 NRS 125C.250 provides:

16 Except as otherwise provided in NRS 125C.0689, in an action to determine legal custody,
17 physical custody, or visitation with respect to a child, the court may order reasonable fees
18 of counsel and experts and other costs of the proceeding to be paid in proportions and at
19 times determined by the court.

20 At trial it was established that Ms. Davis had paid fees and costs associated with this case,
21 through February the sum of \$26,000. This sum did not include the cost of trial. Ms. Davis had to
22 borrow money from her father to support the costs of litigation.

23 Mr. Matkulak asserted that the extreme cost of litigation was due to Ms. Davis's request
24 for more than the statutory amount of child support and based upon the fact that Ms. Davis had
25 three attorneys leading up to trial.⁹

26 Mr. Matkulak confirmed at trial that he did promulgate the legal theory that the statutory

27 _____
28 ⁹ The Court note that Ms. Davis's current counsel it who filed the instant action, so her prior lawyers were engaged
for pre litigation negotiations. Further this Court takes note that Mr. Ryan's fees at \$300 per hour are well below the
market price for an attorney of his skill and knowledge.

1 amount of child support was in excess of the child's needs and as such he should, in theory, be
2 entitled to a downward adjustment in his child support obligation.

3 Mr. Matkulak testified that the purpose in his request for a downward adjustment of his
4 child support was to convince Ms. Davis to accept his offer of a slight upward adjustment. This
5 strategy necessarily increased the costs of this litigation as the starting point for negotiations was
6 not the statutory amount of child support, but rather a threat of litigation is Ms. Davis did not
7 accept his offer of payment of slightly more child support or he would pursue his quest for a
8 downward adjustment. And all evidence suggests that he only abandoned this request after the
9 settlement conference.

10 Additionally, Mr. Matkulak's insisted his attorney be involved in even the most mundane
11 decisions related to Bennett. At trial Ms. Matkulak testified that he had not paid any fees or costs
12 associated with this action, but he believed his attorney's hourly rate was approximately \$400.

13 The evidence revealed that Mr. Matkulak would not pay one half of a medical bill incurred
14 by Ms. Davis on Bennett's behalf without the bill being handled by his attorney. *See Petitioner's*
15 *Exhibit A*. When asked on the witness stand he stated that so long as his attorney told him it was
16 fine to share a medical bill then he would be willing to divide the bill. Asked if he had any
17 objection to Ms. Davis speaking with Bennett once a day while Bennett was in his care, he stated
18 he would comply with the Court's order. Mr. Matkulak stated that he is paying all of Bennett's
19 childcare expenses because he pays one-half directly to the provider and one-half to Ms. Davis as
20 part of his child support obligation.

21 The Court confirms its prior statement that Mr. Matkulak is using his superior wealth to
22 unnecessarily increase the cost of litigation.

23 As such the Court will award Ms. Davis attorney's fees and costs associated with this
24 action.

25 "A party can prevail under NRS 18.010 if it succeeds on any significant issue in litigation
26 which achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n v. Overfield*, 122
27 Nev. 7,10, 106 P.3d 1198, 1200 (2005.)

28 In making an award of fees, the Court also examines the reasonableness of attorneys' fees

1 under the factors set forth in *Brunzell*:

2 (1) the qualities of the advocate: his ability, his training, education, experience,
3 professional standing and skill; (2) the character of the work to be done: its
4 difficulty, its intricacy, its importance, time and skill required, the responsibility
5 imposed and the prominence and character of the parties where they affect the
6 importance of the litigation; (3) the work actually performed by the lawyer: the
skill, time and attention given to the work; (4) the result: whether the attorney was
successful and what benefits were derived.

7 85 Nev. at 349, 455 P.2d at 33. Each of these factors must be given consideration. *Id.* 85 Nev. at
8 350, 455 P.2d at 33.

9 The district court's decision to award attorney fees is within its discretion and will not be
10 disturbed on appeal absent a manifest abuse of discretion. *Capanna*, 134 Nev. at 895, 432 P.3d at
11 734 (2018).

12 NRS 18.020(3) provides costs must be allowed to a prevailing party against any adverse
13 party against whom judgment is rendered in an action for the recovery of money or damages,
14 where the plaintiff seeks to recover more than \$2,500.

15 Counsel for Ms. Davis is directed to provide this Court with an affidavit pursuant to
16 *Brunzell* and *Wilfong* for an award of attorneys' fees and costs within 20 days. Mr. Matkulak shall
17 have the requisite period of time in which to oppose. Ms. Davis shall submit the matter thereafter.

18 **Additional Orders**

19 Each Parent shall refrain from criticizing or denigrating the other Parent in the presence of
20 the minor child or within the hearing distance of the minor child. Additionally, each Parent shall,
21 in good faith, prevent the minor child from being exposed to comments from any third party that
22 are denigrating or critical of the other Parent. Each party shall avoid behavior which might serve
23 to undermine Bennett's love and respect for the other parent. Each party shall encourage love and
24 respect between Bennett and the other parent, and neither party shall do anything which may
25 knowingly hamper the other's relationship with Bennett.

26 Each Parent shall not, on any social media, denigrate or criticize the other Parent or the
27 other Parent's immediate family and, will, in good faith, attempt to prevent third parties from so
28 doing. Each Parent shall not discuss the nature of this action with the children.

1
2 The parties shall continue to utilize Our Family Wizard as their primary mode of
3 communication, in the absence of an emergency involving the minor child, for the entirety of
4 Bennett's minority, absent written agreement between the parties. The communications between
5 the parties shall be limited to issues pertaining to the well-being and care of Bennett. The parties
6 shall check for communications on Our Family Wizard a minimum of every Monday and
7 Thursday, and shall respond that day if the other parent's communication requests a response or
8 poses a question. In addition, anything that has been scheduled for the minor child shall be
9 included on the Our Family Wizard calendar.

10 **IT IS FURTHER ORDERED AND THE PARTIES ARE PUT ON NOTICE** that they
11 are subject to the requirements of the following Nevada Revised Statutes:

12 **NRS 125.510(6) regarding abduction, concealment or detention of a child:**

13 **PENALTY FOR VIOLATION OF THE ORDER:** THE ABDUCTION,
14 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS
15 PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130.

16
17 NRS 200.359 provides that every person having a limited right of custody to a child or any
18 parent having no right of custody to the child who willfully detains, conceals or removes the child
19 from a parent, guardian or other person having lawful custody or right of visitation of the child in
20 violation of an order of this court, or removes the child from the jurisdiction of the court without
21 the consent of either the court or all persons who have the right to custody or visitation is subject
22 to being punished for a category D felony as provided in NRS 193.130.

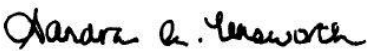
23 The State of Nevada, United States of America, is the habitual residence of the minor
24 children. The parties are hereby put on notice that the terms of the Hague Convention of October
25 25, 1980, adopted by the Fourteenth Session of the Hague Convention on Private International
26 Law, apply if a parent abducts or wrongfully detains a child in a foreign country.
27
28

1 NRS 125C.200 requires that a parent wishing to move their residence outside the State of
2 Nevada and to take a child or children with them must as soon as possible and before the planned
3 move attempt to obtain the written consent of the non-custodial parent or permission of the Court.

4 The parties are hereby notified that, pursuant to NRS 125B.145, each person subject to this
5 Order may request a review of the order for child support every three (3) years or at any time based
6 on changed circumstances.

7 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

8 Dated this 14 day of June, 2021.

9
10 

11 _____
12 Sandra A. Unsworth
13 District Judge
14
15

16 FV20-00559
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on June 14, 2021, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or via e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

KEVIN RYAN, ESQ., for KOURTNEY DAVIS
SHAWN MEADOR, ESQ., for TONY MATKULAK



Judicial Assistant

EXHIBIT “4”

EXHIBIT “4”

EXHIBIT “4”

1 Code:
2
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4

5 IN THE FAMILY DIVISION
6 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8
9 KOURTNEY L. DAVIS,

10 Petitioner,

Case No. FV20-00559

11 vs.

Dept. No. 12

12 TONY MATKULAK,

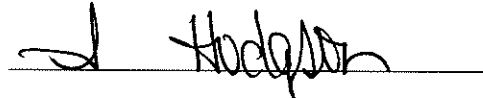
13 Respondent.
14 _____ /

15 **NOTICE OF ENTRY OF ORDER**

16 PLEASE TAKE NOTICE that the above-entitled Court entered the **Order Establishing**
17 **Custody, Visitation and Child Support** in this matter on June 16, 2021. A copy of the Order
18 is attached.

19 This document does not contain the social security number of any person.

20 DATED this 24 day of June, 2021.

21 
22 _____

23 Court Employee

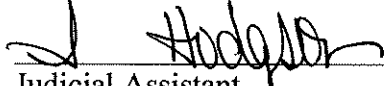
24
25
26 FV20-00559
27

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on June 24, 2021, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or via e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

**KEVIN RYAN, ESQ., for KOURTNEY DAVIS
SHAWN MEADOR, ESQ. for TONY MATKULAK**



Judicial Assistant

1 Code:
2
3

4 IN THE FAMILY DIVISION
5 OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF WASHOE

7
8 KOURTNEY L. DAVIS,

9 Petitioner,

Case No. FV20-00559

10 vs.

Dept. No. 12

11 TONY MATKULAK,

12 Respondent.
13 _____ /

14
15 **ORDER ESTABLISHING CUSTODY, VISITATION AND CHILD SUPPORT**

16 This matter came before the Court on March 11, 2021, for trial by audio visual means
17 pursuant to the Administrative Order entered March 16, 2020, and Nevada Supreme Court Rule
18 Part IX-B. on the *Verified Petition to Establish Custody, Visitation and Child Support*, filed by
19 Petitioner, Kourtney L. Davis (Ms. Davis) on April 29, 2020. Ms. Davis was present with counsel,
20 Kevin P. Ryan, Esq, of Bader & Ryan, LTD. Respondent, Tony Matkulak (Mr. Matkulak) was
21 present with counsel, Shawn B Meador, Esq. of Woodburn & Wedge.

22 Following a day long trial, in which the Court heard the testimony of the parties, reviewed
23 the exhibits admitted into evidence, including the report prepared by Michelle L. Salazar,
24 CPA/ABV, CVA, DFE, CDFA admitted by stipulation; and having heard the arguments of
25 counsel, this Court issues the following Findings of Fact, Conclusions of Law and Orders:

26 ///

27 ///

1 **FINDINGS OF FACT; CONCLUSIONS OF LAW**

2 **Stipulated Findings of Fact**

3 1. The parties are unmarried and the parents of Bennett Davis Matkulak, born May 2, 2018.

4 2. This Court has the necessary UCCJA, UCCJEA and PKPA initial and continuing
5 jurisdiction to enter orders regarding child custody and visitation regarding the minor child, and
6 hereby exercises said jurisdiction.

7 3. Mr. Matkulak is the biological father of the minor child pursuant to NRS 126.053.

8 4. Based upon the agreement of the parties, the parties shall share joint legal custody of
9 Bennett.

10 5. Based upon the agreement of the parties, the parties shall share joint physical custody of
11 Bennett. Given Bennett's young age, the current timeshare is a 2-2-3 schedule.

12 6. Based upon the agreement of the parties the final order will include a non-disparagement
13 clause.

14 7. This Court has jurisdiction over the parties and subject matter of this action to enter
15 orders regarding the minor children.

16 8. The parties are entitled to a judgment and decree of custody and visitation finally
17 resolving each of these issues.

18 **Contested Issues**

19 The contested issues presented at trial relate to the appropriate holiday schedule; child
20 support; childcare costs; extracurricular costs; who should provide insurance coverage for Bennett
21 and payment of uncovered medical costs, dependent claim; and attorney's fees.

22 Holiday Schedule

23 Ms. Davis presented a holiday schedule that was unopposed by Mr. Matkulak, as such Ms.
24 Davis's proposal is adopted by the Court as being in the best interest of the minor child.¹

Holiday	Odd Years	Even Years
Thanksgiving	Mother	Father

27 ¹ In establishing a holiday schedule, the Court did not analyze each best interest factor, rather the Court relies on NRS
28 125C.0035(4)(d), without an established holiday schedule, there is a greater likelihood of conflict between the parties
in deciding how to share holidays and special days. A further analysis of the best interest factors was not completed
in light of the fact that the proposed holiday schedule was a very standard schedule.

1	Christmas	Father	Mother
2	Spring Break	shared	shared
3	Easter	Mother	Father
4	Bennett's Birthday	Father	Mother
5	Mother's Day	Mother	Mother
6	Memorial Day	Mother	Father
7	Father's Day	Father	Father
8	4 th of July	Mother	Father
9	Labor Day	Father	Mother
10	Fall Break	Father	Mother
11	Halloween	Mother	Father

12 Thanksgiving: Until Bennett begins school, the holiday will begin on the Wednesday
13 before Thanksgiving at 4:00 p.m. until the Sunday following Thanksgiving at 4:00 p.m. Once
14 Bennett begins school, the holiday will begin when school is released before Thanksgiving until
15 Bennett is returned to school on the Monday following Thanksgiving.

16 Christmas: Until Bennett begins school, Christmas will be defined as from 9:00 a.m. on
17 December 24th until noon on December 26th. The parent who does not have Christmas will have
18 Bennett from noon on December 26th until noon on December 28th. Once Bennett begins school,
19 the parent entitled to Christmas will be entitled to the first half of Bennett's Break from school.
20 This half of the break will include Christmas Eve and Day. The other parent will be entitled to
21 second half of the break.

22 Spring Break: Once Bennett is in school, so long as Spring Break is two weeks long, the
23 break will be equally divided between the parties with the first week going to the parent whose
24 custody schedule falls on the first weekend of the break until 9:00 a.m. on the following Friday.
25 The second week will be defined from 9:00 a.m. on the middle Friday of the break until 9:00 a.m.
26 on the final Friday of the break.

27 Easter: The parent entitled to Easter shall have the minor child from 4:00 p.m. on the
28 Saturday before Easter until 1:00 p.m. on Easter Sunday. The other parent shall have the child

1 from 1:00 p.m. on Easter Sunday until 9:00 a.m. the Monday following.

2 Bennett's Birthday: Birthday visitation shall be defined as from 9:00 a.m. on Bennett's
3 birthday to 9:00 a.m. the day following.

4 Mother's Day/ Father's Day: Mother's Day/Father's Day shall be defined as the Friday
5 before Mother's Day/Father's Day from 9:00 a.m. until 9:00 a.m. on the Monday following
6 Mother's Day/Father's Day.

7 Memorial Day/ Labor Day: The party entitled to this holiday will have the minor child
8 9:00 a.m. on the Friday before the holiday until 9:00 a.m. on the Tuesday following the holiday.

9
10 4th of July: Custody shall begin on July 3rd at 9:00 a.m. until July 5th at 4:00 p.m.

11 Fall Break: Once Bennett is in school the parties will alternate who has Bennett for this
12 school break. This break is defined as from when Bennett is released from the school proceeding
13 the break until he is returned to school following the break.

14 Halloween: This holiday shall be defined as from 4:00 p.m. on October 31st until 9:00
15 a.m. on November 1st.

16 Vacation Time: Each parent shall have the right to 14 days of custody to be taken in two
17 blocks of not more than seven consecutive days, for the purpose of vacation, during the calendar
18 year, as long as the vacation time does not interfere with the holiday schedule set forth above,
19 unless agreed to by the parents. The party who wishes to exercise his/her vacation time, shall give
20 the other party notice, in writing, a minimum of 30-days prior to the scheduled vacation time. In
21 the event there is a conflict between the vacation time requested, in even years Father will have 1st
22 choice and in odd years Mother will have 1st choice. The parent exercising vacation time shall
23 notice the other parent of the vacation location, duration, and provide contact information
24 regarding where Bennett will be staying. If either parent does not exercise his/her 14 days of
25 vacation time during the calendar year, those days are forfeited.

26 Each party are entitled to two vacation periods of up to seven days for each period. If a
27 parent elects to take a vacation shorter than seven days, that parent forfeits the additional days.
28 For example, if a parent takes one vacation for 5 days, he/she may not add the other two days to

1 his/her second vacation block.

2 Telephone Access: Each party shall have the right to make one phone call/facetime call to
3 Bennett when Bennett is in the custody of the other parent. Parents shall keep these calls within
4 reasonable hours and for a reasonable duration, during Bennett's normal waking hours. Bennett
5 may contact the non-custodial parent anytime he wants.

6 Child Support

7 Child support in this case is governed by NAC 425.

8 As the parties are sharing joint physical custody of Bennett, the parties are both "obligors."
9 *NAC 425.037.*

10 "It is presumed that the basic needs of a child are met by a child support obligation
11 established pursuant to the guidelines set forth in this chapter, however, this presumption may be
12 rebutted by evidence that the needs of a particular child are not met or are exceeded by such a child
13 support obligation." *NAC 425.100(2).* Basic needs are not defined in NAC 425.²

14 While Mr. Matkulak questioned the amount that Ms. Davis was capable of earning, in his
15 trial statement, he agreed to use her claimed gross monthly income of \$5,144 to calculate her child
16 support obligation. Ms. Davis works two jobs to earn this GMI. Further her GMI includes rental
17 income. $\$5,144 \times 16\% = \823.04 per month.

18 Ms. Davis asserted Mr. Matkulak's GMI was \$38,240. Mr. Matkulak stated his average
19 GMI was \$38,392.42.³ This figure was used to calculate his child support obligation.

20 $\$6,000 \times 16\% = \960

21 $\$4,000 \times 8\% = \320

22 $\$28,392.42 \times 4\% = \$1,135.70$

23 $\$960 + \$320 + \$1,135.70 = \$2,415.70$ per month.

24 In accord with NAC 425.115(3), Mr. Matkulak's owes Ms. Davis \$1,592.56 per month as

25 _____
26 ² In NRS Chapter 159A.186, basic needs of a child are defined to include, without limitation, "food, shelter, clothing
27 and medical care." However, this guardianship definition does not assist the Court in determining what basic needs
28 means in the context of the NAC as medical support is carved out into a separate determination. *See NAC 425.135.*

³ In his trial statement Mr. Matkulak stated, "After filing his most recent financial disclosure Father discovered the
need for some modest corrections to his 2020 income." Mr. Matkulak states his financial disclosure forms reflect his
2020 was \$34,082.91 per month as compared to \$38,392.42 per month; a difference of \$4,309.51 per month. This
modest error equates to approximately 85% of Ms. Davis's gross monthly income of \$5,144.

1 and for child support of Bennett. ($\$2,415.70 - \$823.04 = \$1,592.56$).

2 Mr. Matkulak asserted that Ms. Davis's financial disclosure form reflected she pays \$787
3 for Bennett's direct expenses, these direct expenses are listed as \$468 for childcare; \$85 for
4 clothing; \$131 for entertainment, gifts, and toys; \$53 for half the cost of swimming lessons; and
5 \$50 for diapers and wipes. Thus, his argument is that Bennett's basic needs are amply provided
6 for with the payment of \$1,592.56 per month in child support. However, these direct expenses do
7 not include food or shelter. Of the personal expense schedule set forth in her financial disclosure
8 form, Ms. Davis pays the sum of \$1,950 for rent for the residence Bennett lives in half the time;
9 she pays \$206 per month for utilities; she pays \$550 per month for food; and she pays \$303 in auto
10 expenses.⁴ These expenses are incurred in part to assure that Bennett's basic needs for food and
11 shelter are met and that he can be transported to and from childcare, visitation exchanges and
12 swimming. The point is that Bennett's basic needs go well beyond his direct expenses.

13 "If the court establishes a child support obligation that is greater or less than the child
14 support obligation that would be established pursuant to the guidelines set forth in this chapter, the
15 court must (a) Set forth findings of fact as the basis for the deviation from the guidelines; and (b)
16 Provide in the findings of fact the child support obligation that would have been established
17 pursuant to the guidelines." *NAC 100(3)*.

18 Bennett is three years old. Both of the parties work full time jobs. Childcare is a necessary
19 expense. Currently the parties agree that childcare costs are \$936 per month. This Court has the
20 right to make an equitable division of the cost of childcare. Given the fact that Mr. Matkulak earns
21 7.46 times the amount per month that Ms. Davis earns and that his monthly housing expenses are
22 half of what Ms. Davis pays for housing, equity demands that Mr. Matkulak pay any and all
23 childcare costs incurred for Bennett. *See NAC 425.130*.

24 Medical support for Bennett is required, however, the Court can assess who provides and
25 pays for the premium for health insurance and who pays the uncovered amounts. *NAC 425.135*.

26 _____
27 ⁴ Mr. Matkulak does not pay rent or a mortgage, his housing expenses are property taxes of \$636.63 per month. He
28 pays an HOA of \$40 per month and house insurance in the amount of \$112.74 for a total housing expense of \$789.37.
He pays \$483 in utilities and \$600 per month in yard care. He pays \$1,800 per month in food expenses. His direct
expenses for Bennett per month are \$468 for childcare; \$100 for clothing; \$150 for extracurriculars; \$237.50 for health
insurance; \$30 for transportation costs for visitation; and \$50 for other for a total of \$1,035.50.

1 Bennett is currently covered by Mr. Matkulak for a monthly cost of \$237.50. Given Mr.
2 Matkulak's superior earnings, the cost of plan, co-payments, deductibles, and maximum out-of-
3 pocket expenses shall be born solely by Mr. Matkulak. This obligation will include the cost of
4 glasses or braces if necessary in the future.

5 Ms. Davis testified that she had access to health coverage for Bennett without cost. Mr.
6 Matkulak has the right to utilize this policy so long as it is available. If Mr. Matkulak elects to
7 continue to pay for the policy he has for Bennett, Ms. Davis is encouraged to retain her policy as
8 a secondary policy for Bennett.

9 Currently Bennett is in swimming. However, as he gets older, it is likely that he will
10 participate in many more extracurricular activities. Given the vast disparity between the parties'
11 income, Mr. Matkulak shall pay 75% for all extracurricular activities, including all costs for
12 equipment and supplies necessary for said extracurricular activities and Ms. Davis will pay 25% of
13 these costs.

14 The parties shall confer with one another and either agree or disagree in advance and in
15 writing to their child's participation in any extracurricular activity. If the parties mutually agree
16 on an extracurricular activity, they shall divide the cost as set forth above and commit to getting
17 Bennett to the agreed upon activity. If the parties disagree on the child's participation in an
18 extracurricular activity, the parent insisting on the activity shall assume the entire cost of the
19 activity. Moreover, if the activity is not agreed upon, it may not unreasonably interfere with the
20 other parent's custodial time and the non-agreeing parent has no obligation to get the child to that
21 activity or any event associated therewith.

22 Neither party shall unreasonably withhold consent to an activity.

23 Ms. Davis asked the Court for an upward adjustment of child support based upon the vast
24 disparity between the parties' income. Mr. Matkulak opposed this upward adjustment based upon
25 his assertion that Bennett's needs were met with his payment of his basic child support obligation.

26 **NAC 425.150 Adjustment of child support obligation in accordance with specific**
27 **needs of child and economic circumstances of parties. (NRS 425.620)**

1 1. Any child support obligation may be adjusted by the court in accordance with the
2 specific needs of the child and the economic circumstances of the parties based upon the
3 following factors and specific findings of fact:

4 (a) Any special educational needs of the child:

5 *There are no known special educational needs for Bennett.*

6 (b) The legal responsibility of the parties for the support of others;

7 *Neither party has the legal responsibility for the support of others.*

8 (c) The value of services contributed by either party;

9 *There is no indication that either party provides greater services to Bennett.*

10 (d) Any public assistance paid to support the child;

11 *Not applicable.*

12 (e) The cost of transportation of the child to and from visitation;

13 *This cost is de minimus given that both parties reside in Reno, Nevada.*

14 (f) The relative income of both households, so long as the adjustment does not exceed
15 the total obligation of the other party;

16 *Mr. Matkulak has a GMI of \$38,392.42 as compared to Ms. Davis who has a GMI of
17 \$5,144 and who works two jobs. Mr. Matkulak 7.46 times the amount that Ms. Davis earns
18 per month.*

19 (g) Any other necessary expenses for the benefit of the child; and

20 *Bennett is in child care; some extracurricular activities and he needs health insurance.*

21 (h) The obligor's ability to pay.

22 *Mr. Matkulak clearly has the ability to pay child support.*

23 Ms. Davis's monthly income is one seventh that of Mr. Matkulak's. Her monthly expenses
24 are approximately one half those of Mr. Matkulak. Ms. Davis works two jobs to earn the sums
25 she does.⁵ She is able to put aside approximately 10% of her monthly income toward her
26 retirement. Mr. Matkulak invests \$2,166.67 per month in his retirement, and he is able to save an
27 amount greater than Ms. Davis's monthly income. Ms. Davis has a housing expense of \$2,156⁶
28 as compared to Mr. Matkulak who has a housing expense of \$1,272.37.⁷ Ms. Davis testified her
29 home is 1,600 square feet, three-bedroom house with a 5' square rock back yard. She testified that
30 Mr. Matkulak lives in a 4500 square foot home with five bedrooms; and a five-car garage. She
31 states the home is located on an acre and one half. Ms. Davis spends one third the amount that
32 Mr. Matkulak does on food.

33 Ms. Davis testified she wants a home for Bennett with a backyard and a security system.
34 She would like to not work two jobs. A review of Ms. Davis's financial disclosure reveals she is

35 ⁵ Ms. Davis works Monday through Friday from 8:00 a.m. until 5:00 p.m. Additionally she does private coaching
36 every Tuesday and every other Wednesday and Thursday.

37 ⁶ Rent and utilities.

38 ⁷ Property taxes, insurance, HOA fees and utilities.

1 living very fugally.

2 The Nevada Supreme Court held in *Barbagallo v. Barbagallo*, 105 Nev.546, 779 P.2d 532
3 (1989) the expenses related to raising a child are most likely increased in joint physical custody
4 cases. Further, in determining the appropriate amount of support a greater weight must be given
5 to the standard of living and circumstances of each parent, their earning capacities, and relative
6 financial means. Of course, this case was decided based upon NRS Chapter 125B, which has been
7 replaced by NAC Chapter 425. However, *Barbagallo* has not been overturned by the new child
8 support law. NAC Chapter 425 does not define the terms “basic needs” or “specific needs” and
9 this Court finds the language of *Barbagallo* lends guidance, “[w]hat really matters . . . is whether
10 the children are being taken care of as well as possible under the financial circumstances in which
11 the two parents find themselves.” This language confirms that the needs of a child are subject to
12 the socio-economic position of the child’s parents.

13 Another indicator that each child’s “needs” are to be determined by the Court on a case-
14 by-case basis is the language of the code, which states support is to be based “in accordance with
15 the specific needs of the child” conjunctively with the economic circumstances of the parties. *NAC*
16 *425.150*. This language leaves no doubt that this Court should analysis Bennett’s *specific* needs
17 in light of his parent’s economic circumstances.⁸

18 In this case, Ms. Davis works two jobs to earn \$5,144 per month or \$61,728 annually as
19 compared to Mr. Matkulak who earns \$38,392.42 per month or \$460,709 annually. Mr. Matkulak
20 earns better than half of Ms. Davis’s annual income in one month.

21 This Court finds Bennett’s specific needs are not met by the award of the statutory amount
22 of child support based upon the gross disparity in the parties’ income, taken in conjunction with
23 the parties’ expenses for food and shelter and as such finds Mr. Matkulak has the ability to pay
24 Ms. Davis additional support.

25 As stated above Mr. Matkulak’s base child support obligation, prior to offset, would be
26 \$2,415.70. His child support obligation after offset is \$1,592.56. Based upon this Court’s
27 equitable determination that Mr. Matkulak will pay all childcare expenses, all medical expenses

28 ⁸ The Court did take into consideration the fact that Ms. Davis has a membership at Hidden Valley Country Club and the use of a familial vacation home in Lake Almanor when comparing the parties’ total economic circumstances.

1 and 75% of all extracurricular activities, the Court finds an upward adjustment of \$2,000 is
2 warranted to meet the specific needs of Bennett in conjunction with the parties' economic
3 circumstances.

4 Commencing July 1, 2021, Mr. Matkulak shall pay Ms. Davis the sum of \$3,500 per month
5 as and for child support. Additionally, he shall pay all childcare costs; all medical costs; and 75%
6 of all extracurricular costs.

7 Dependent Claim

8 In even numbered years Mr. Matkulak shall be entitled to the dependency credit and
9 childcare deduction for Bennett and in odd numbered years Ms. Davis shall be entitled to the
10 dependency credit and childcare deduction for Bennett.

11 Attorney's Fees

12 On January 6, 2021, Ms. Davis filed a motion for award of interim attorney's fees and
13 costs. This motion was submitted and held in abeyance pending the outcome of the trial. Ms.
14 Davis correctly stated the relevant law.

15 NRS 125C.250 provides:

16 Except as otherwise provided in NRS 125C.0689, in an action to determine legal custody,
17 physical custody, or visitation with respect to a child, the court may order reasonable fees
18 of counsel and experts and other costs of the proceeding to be paid in proportions and at
19 times determined by the court.

20 At trial it was established that Ms. Davis had paid fees and costs associated with this case,
21 through February the sum of \$26,000. This sum did not include the cost of trial. Ms. Davis had to
22 borrow money from her father to support the costs of litigation.

23 Mr. Matkulak asserted that the extreme cost of litigation was due to Ms. Davis's request
24 for more than the statutory amount of child support and based upon the fact that Ms. Davis had
25 three attorneys leading up to trial.⁹

26 Mr. Matkulak confirmed at trial that he did promulgate the legal theory that the statutory

27 _____
28 ⁹ The Court note that Ms. Davis's current counsel it who filed the instant action, so her prior lawyers were engaged
for pre litigation negotiations. Further this Court takes note that Mr. Ryan's fees at \$300 per hour are well below the
market price for an attorney of his skill and knowledge.

1 amount of child support was in excess of the child's needs and as such he should, in theory, be
2 entitled to a downward adjustment in his child support obligation.

3 Mr. Matkulak testified that the purpose in his request for a downward adjustment of his
4 child support was to convince Ms. Davis to accept his offer of a slight upward adjustment. This
5 strategy necessarily increased the costs of this litigation as the starting point for negotiations was
6 not the statutory amount of child support, but rather a threat of litigation is Ms. Davis did not
7 accept his offer of payment of slightly more child support or he would pursue his quest for a
8 downward adjustment. And all evidence suggests that he only abandoned this request after the
9 settlement conference.

10 Additionally, Mr. Matkulak's insisted his attorney be involved in even the most mundane
11 decisions related to Bennett. At trial Ms. Matkulak testified that he had not paid any fees or costs
12 associated with this action, but he believed his attorney's hourly rate was approximately \$400.

13 The evidence revealed that Mr. Matkulak would not pay one half of a medical bill incurred
14 by Ms. Davis on Bennett's behalf without the bill being handled by his attorney. *See Petitioner's*
15 *Exhibit A*. When asked on the witness stand he stated that so long as his attorney told him it was
16 fine to share a medical bill then he would be willing to divide the bill. Asked if he had any
17 objection to Ms. Davis speaking with Bennett once a day while Bennett was in his care, he stated
18 he would comply with the Court's order. Mr. Matkulak stated that he is paying all of Bennett's
19 childcare expenses because he pays one-half directly to the provider and one-half to Ms. Davis as
20 part of his child support obligation.

21 The Court confirms its prior statement that Mr. Matkulak is using his superior wealth to
22 unnecessarily increase the cost of litigation.

23 As such the Court will award Ms. Davis attorney's fees and costs associated with this
24 action.

25 "A party can prevail under NRS 18.010 if it succeeds on any significant issue in litigation
26 which achieves some of the benefit it sought in bringing suit." *Valley Elec. Ass'n v. Overfield*, 122
27 Nev. 7,10, 106 P.3d 1198, 1200 (2005.)

28 In making an award of fees, the Court also examines the reasonableness of attorneys' fees

1 under the factors set forth in *Brunzell*:

2 (1) the qualities of the advocate: his ability, his training, education, experience,
3 professional standing and skill; (2) the character of the work to be done: its
4 difficulty, its intricacy, its importance, time and skill required, the responsibility
5 imposed and the prominence and character of the parties where they affect the
6 importance of the litigation; (3) the work actually performed by the lawyer: the
7 skill, time and attention given to the work; (4) the result: whether the attorney was
8 successful and what benefits were derived.

9 85 Nev. at 349, 455 P.2d at 33. Each of these factors must be given consideration. *Id.* 85 Nev. at
10 350, 455 P.2d at 33.

11 The district court's decision to award attorney fees is within its discretion and will not be
12 disturbed on appeal absent a manifest abuse of discretion. *Capanna*, 134 Nev. at 895, 432 P.3d at
13 734 (2018).

14 NRS 18.020(3) provides costs must be allowed to a prevailing party against any adverse
15 party against whom judgment is rendered in an action for the recovery of money or damages,
16 where the plaintiff seeks to recover more than \$2,500.

17 Counsel for Ms. Davis is directed to provide this Court with an affidavit pursuant to
18 *Brunzell* and *Wilfong* for an award of attorneys' fees and costs within 20 days. Mr. Matkulak shall
19 have the requisite period of time in which to oppose. Ms. Davis shall submit the matter thereafter.

20 Additional Orders

21 Each Parent shall refrain from criticizing or denigrating the other Parent in the presence of
22 the minor child or within the hearing distance of the minor child. Additionally, each Parent shall,
23 in good faith, prevent the minor child from being exposed to comments from any third party that
24 are denigrating or critical of the other Parent. Each party shall avoid behavior which might serve
25 to undermine Bennett's love and respect for the other parent. Each party shall encourage love and
26 respect between Bennett and the other parent, and neither party shall do anything which may
27 knowingly hamper the other's relationship with Bennett.

28 Each Parent shall not, on any social media, denigrate or criticize the other Parent or the
other Parent's immediate family and, will, in good faith, attempt to prevent third parties from so
doing. Each Parent shall not discuss the nature of this action with the children.

1
2 The parties shall continue to utilize Our Family Wizard as their primary mode of
3 communication, in the absence of an emergency involving the minor child, for the entirety of
4 Bennett's minority, absent written agreement between the parties. The communications between
5 the parties shall be limited to issues pertaining to the well-being and care of Bennett. The parties
6 shall check for communications on Our Family Wizard a minimum of every Monday and
7 Thursday, and shall respond that day if the other parent's communication requests a response or
8 poses a question. In addition, anything that has been scheduled for the minor child shall be
9 included on the Our Family Wizard calendar.

10 **IT IS FURTHER ORDERED AND THE PARTIES ARE PUT ON NOTICE** that they
11 are subject to the requirements of the following Nevada Revised Statutes:

12 **NRS 125.510(6) regarding abduction, concealment or detention of a child:**

13 **PENALTY FOR VIOLATION OF THE ORDER:** THE ABDUCTION,
14 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS
15 PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130.

16
17 NRS 200.359 provides that every person having a limited right of custody to a child or any
18 parent having no right of custody to the child who willfully detains, conceals or removes the child
19 from a parent, guardian or other person having lawful custody or right of visitation of the child in
20 violation of an order of this court, or removes the child from the jurisdiction of the court without
21 the consent of either the court or all persons who have the right to custody or visitation is subject
22 to being punished for a category D felony as provided in NRS 193.130.

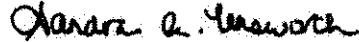
23 The State of Nevada, United States of America, is the habitual residence of the minor
24 children. The parties are hereby put on notice that the terms of the Hague Convention of October
25 25, 1980, adopted by the Fourteenth Session of the Hague Convention on Private International
26 Law, apply if a parent abducts or wrongfully detains a child in a foreign country.
27
28

1 NRS 125C.200 requires that a parent wishing to move their residence outside the State of
2 Nevada and to take a child or children with them must as soon as possible and before the planned
3 move attempt to obtain the written consent of the non-custodial parent or permission of the Court.

4 The parties are hereby notified that, pursuant to NRS 125B.145, each person subject to this
5 Order may request a review of the order for child support every three (3) years or at any time based
6 on changed circumstances.

7 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

8 Dated this 14 day of June, 2021.

9
10 

11 _____
12 Sandra A. Unsworth
13 District Judge

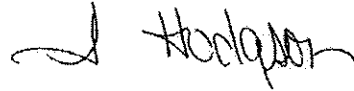
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on June 14, 2021, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or via e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

**KEVIN RYAN, ESQ., for KOURTNEY DAVIS
SHAWN MEADOR, ESQ., for TONY MATKULAK**



Judicial Assistant