

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 23 2021 11:42 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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|-------------------|---|-----------------|-------|
| KATARINA E. KURZ, |) | CASE NO. | 83231 |
| |) | | |
| Appellant, |) | | |
| |) | | |
| vs. |) | | |
| |) | | |
| SCOTT M. ANTHONY, |) | | |
| |) | | |
| Respondent. |) | | |
| _____ |) | | |

RESPONDENT'S FAST TRACK RESPONSE

1. The Respondent, Scott M. Anthony, is the party filing this fast track response.

2. Joseph W. Houston II, is the attorney for the Respondent submitting this fast track response. His address is 430 South 7th Street, Las Vegas, Nevada 89101. His office telephone number is (702) 982-1200. His e-mail address is jwh7408@yahoo.com .

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3. The Respondent is not aware of any other appeal or proceeding before the Nevada Supreme Court which raised the same or similar issues as being presented here.

4. The procedural history of the case is as is set forth in the Appellant's Fast Track Statement.

5. The statement of fact is clearly set forth by the District Court in the Court's own written Decision in which the District Court Judge herself wrote the Decision. That Decision was twenty-three pages in length. The relevant facts are that the parties started divorce proceedings in the State of Nebraska and eventually concluded them in Nebraska. As set forth in the Findings of Fact by the District Court Judge, at an initial hearing after the divorce commenced the Judge ordered Joint Legal and Joint Physical Custody with a two-week rotating schedule. This occurred at a hearing on April 23, 2018 (ROA 129). The parties then voluntarily agreed to change the schedule to a month to month schedule and continuing Joint Legal and Joint Physical Custody and that scheduled continued until July of 2019 (ROA 129). Therefore, for one year and three months before the child had to begin Kindergarten, the parties exercised Joint Legal and Joint Physical Custody arrangement. The mother admitted that she did not have any concerns with the minor child's care during the month to

month custody arrangement that proceeded at the time of the final Nebraska court hearing. This was found by the District Court Judge in the Findings of Fact (ROA 132). As further found in the Findings of Fact by the District Court Judge, the mother did not have any complaints whatsoever about the father's ability to care for the minor child (ROA 132). The Nebraska Judge had to make a decision from one parent or the other as the child was to begin Kindergarten approximately one month after the final Nebraska trial and the Court ruled in favor of the mother who was already living at that time in the State of Nevada. The father moved to Las Vegas, Nevada to be closer to his son and have a continuing Joint Physical Custody relationship with his son in October of 2020 (ROA 130).

6. The first issues submitted on appeal is whether the District Court erred in excluding a letter which was written by the Nebraska Judge apparently to the attorneys in the case which allegedly set forth certain findings which he may have made. First of all, there were no **FINDINGS** by the Nebraska Court in any court order which found that the Father had committed any act of domestic violence.

The Court in it's written order on pages 8-10, addresses this issue. There was a letter which the Appellant sought to introduce into evidence which

supposedly was written by the Judge to one or both of the attorneys. However, this was not an order of the Court. Nevada Law is apparently similar to that of Nebraska as in the case of State, Div. Child & Fam. Servs. V. Dist. Ct., 120 Nev., Adv Opn 50 (July 12, 2004), the Nevada Supreme Court ruled as follows,

“Dispositional order that are unrelated to administrative procedure and case management, and that have not been signed and filed, are ineffective and cannot serve as a basis for contempt. . .

‘[t]he district court’s oral pronouncement from the bench, the clerk’s minute order, and even an unfiled written order are ineffective for any purpose.’ . . .

NRCP 58(c) provides that ‘[t]he filing with the clerk of a judgment, signed by the judge, or by the clerk, as the case may be, constitutes the entry of such judgment, and no judgment shall be effective for any purpose until the entry of the same, as hereinbefore provided.’ ”

The District Court Judge was not only correct in not allowing a hearsay document into evidence, but also ruling that the orders of the court in the State of Nebraska did not find at any time that Mr. Anthony, the father of the child, had committed any act of domestic violence.

That further the District Court addressed this issue in detail in its written Decision when the District Court addressed Nebraska Law and found that pursuant to Nebraska Law, the Decree of Divorce did not find that any domestic violence had occurred (ROA 134-136).

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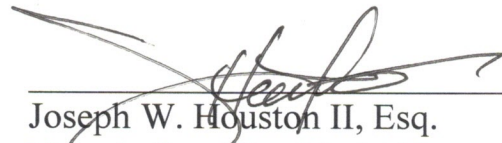
7. The second issue to be raised on appeal is whether relocation by a parent is sufficient change in circumstances to satisfy the first prong of the Ellis v. Carucci case, 123 Nev 145 (2014). Again, this was a factual determination, not a legal determination to be made by the District Court Judge. Based upon the facts in this case, wherein the parties for almost a year and a half had exercised Joint Physical Custody on a month to month rotating basis, wherein there had never been a single concern by the mother for the care the father provided to the child and wherein the mother even since the time of divorce could never raise a single concern about the father, and when the Court needed to make a decision of one parent or the other simply because the child was going to begin Kindergarten, under these factual circumstances the father then moved shortly thereafter to the State of Nevada to again request to maintain his Joint Physical Custody status under these circumstances that change of move from one state to another would definitely create a substantial change in circumstances. Most importantly, the Court addressed all this issue specifically in its twenty plus page Decision (ROA 136-141). And, the Court specifically found that the modification was in the best interest of the minor child.

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Dated this 19 day of November, 2021.

Respectfully submitted by:



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VERIFICATION

1. I hereby certify that this fast track response complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This fast track response has been prepared in a proportionally spaced typeface using [Microsoft WordPerfect X7, Version 17.0.0.314] in [Font size 14 and in Times New Roman]; or

☐ This fast track response has been prepared in a monospaced typeface using [state name and version of word-processing program] with [state number of characters per inch and name of type style].].

2. I further certify that this fast track response complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is either:

☐ Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

☒ Does not exceed 11 pages.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and that the Supreme Court of Nevada may

sanction an attorney for failing to timely file a fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this 19 day of November, 2021.



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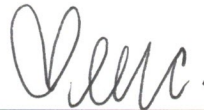
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CERTIFICATION OF SERVICE

I hereby certify that on the 23rd day of November, 2021, service of the
Respondent's Fast Track Response was electronically served on the following:

Denise A. Gallagher, Esq.
GALLAGHER ATTORNEY GROUP, LLC
E-mail: denise@gallagherattorneygroup.com
Attorney for the Appellant



An Employee of JOSEPH W. HOUSTON II, ESQ.