IN THE SUPREME COURT OF THE STATE OF NEVADA

AMANDA REED,

Appellant,

vs.

DEVIN REED,

Respondent.

CASE NO. 83354

APPELLANT'S CHILD CUSTODY FAST TRACK STATEMENT

RACHEAL H. MASTEL, ESQ.
Nevada Bar No. 11646
KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
Tel: (702) 823-4900
Fax: (702) 823-4488
Email: service@kainenlawgroup.com

ATTORNEY FOR APPELLANT

KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89129
702.823.4900 • Fax 702.823.4488
www.KainenLawGroup.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

1. **Party filing Statement:** Amanda Reed

2. **Attorney submitting response:** Racheal Mastel, Esq., Kainen Law Group, PLLC, 3303 Novat Street, Suite 200, Las Vegas Nevada, 89129. (702) 823-4900

3. **Proceedings raising same issues:** None. However, a prior appeal - Reed v. Reed, Supreme Court case 83354 was filed July 2, 2019 and dismissed by stipulation prior to the settlement conference or any briefing.

4. **Jurisdiction and Routing Statement:** This Court has jurisdiction of this appeal under NRAP 3A(b)(1) and (8), as the Court's decision to vacate the trial and modify custody without further evidentiary proceedings operated as a "final order" regarding custody. The same is also a special order after the purported final judgment, as the Decree had been entered and custody was being addressed thereafter. This case is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(10). However, as this appeal will request either clarification or modification of existing Nevada law, the same should be retained by the Supreme Court, pursuant to NRAP 17(a)(12).

5. Procedural history

This case began in 2018, when Devin filed his Complaint for Divorce on March 20th. APPX I:0001. Amanda filed her Answer and Counterclaim on April, 10, 2018. APPX I:0009. A custody agreement was reached and placed on the record on October 16, 2018. APPX I:0137-0139. Thereafter, there remained several financial issues to be resolved. APPX I:0152; I:0226-0227; II:0261-0266. In addition, there were near immediate Motions related to further custody issues. APPX I:0145-0161.[1]

Custody concerns were still being addressed in 2019, despite the fact that the divorce had not been finalized. The Motions requested changes to the timeshare, among other things. APPX I:0145-0161; I:0223-0225; II:0250-0254; II:0346-0378; II:0466-0489. The Court issued a Minute Order on April 8, 2019, finding that a Custody Evaluation and a change of custody were sought, and denying the requested relief. APPX II:0412-0413. That minute Order also gave

---

[1] Because of delays in any response from counsel, the Order from the hearing on October 16, 2018, which resolved custody was not entered until four months later, on February 27, 2019. APPX I:0150; II:0261-0266.

a discovery deadline and trial orders for addressing the financial issues. APPX II:0413.

At the pretrial conference on June 11, 2019, the Court set a bench trial on financial issues for September 12, 2019. APPX II:0433. After the June 11th pretrial conference, Amanda filed a Notice of Appeal of the Court's denial of her request for a custody evaluation. APPX II:0439-0441. However, on July 25, 2019, Amanda also filed a Motion to Modify Custody. APPX II:0466-0489. At the hearing on August 27, 2019, the parties stipulated that Amanda would dismiss the appeal and that Dr. John Paglini would perform a Custody Evaluation. APPX III:0588-0589. A return hearing was set at a time after the report was due to determine "if there is enough to proceed on a custody modification." APPX III:0589; VI:1355. The parties then agreed to a senior judge settlement conference for the financial issues. APPX III:0608. The Custody Evaluation was received on January 27, 2020. APPX VI:1421-1422. The return hearing was set for January 29, 2020, but the Court decided to set a future one hour setting to address the evaluation. APPX III:0608.

The settlement conference was held after the report was received, but before a hearing on the same was conducted. APPX III:0623. Minutes were

entered from the senior judge settlement conference which noted that there were pending custody proceedings and the settlement agreement would not impact that pending proceeding. APPX III:0623. The remaining financial issues were resolved and the parties divorced. APPX III:0623-0624. The Decree of Divorce was entered on April 6, 2020. APPX III:0632.

On April 8, 2020, Amanda filed a Motion to adopt the recommendations of the custody evaluation. APPX III:0705. On April 20, 2020, Devin opposed the Motion. APPX IV:0772. A hearing was held on May 13, 2020. APPX IV:0845. A Minute Order decision was issued later that same day that provided temporary orders and set an evidentiary hearing. APPX IV:0837-0840. The Minute Order was amended on May 26, 2020, to correct an error in requiring the parties to attend a parenting class they both had already taken. APPX IV:0847-0851. Pursuant to the Court's permission, Devin filed a Motion requesting primary physical custody and to have the children attend the school for which he was zoned on July 2, 2020. APPX IV:0924-0949. The trial was set for October 22, 2020. APPX IV:0975-0976. The Court set the Motion to be heard at the trial. APPX V:0996-0997. Before the time of trial, Amanda filed a Motion for the same to be conducted in person, partially because of the need to present video

evidence APPX V:1078-1089. The parties thereafter stipulated to continue to the trial to ensure they would be able to conduct the same in person. APPX V:1116-1118. Although the Stipulation was entered on October 1, 2020, the Court denied a continuance absent a stipulation on November 18, 2020, and directed that the trial would be conducted by Bluejeans. APPX V:1119-1120.

In January 2021, prior to the trial being conducted, the case was reassigned administratively to Judge Shell Mercer and the trial was reset. APPX V:1132-1133. However, on the day of the trial, Judge Mercer vacated the same, finding that *McMonigle v. McMonigle,* 110 Nev. 1407, 887 P.2d 742 (1994), prevented her from conducting a trial on a custody evaluation and facts which predated the entry of the Decree of Divorce. APPX VI:1411; VI:1413; VI:1417-1423. On March 17, 2021, Amanda filed a Motion for Reconsideration. APPX V:1175. Devin opposed the same and countered to modify the timeshare and for other custodial orders. After several status checks, the Court denied the Motion for Reconsideration and Devin's request to modify the children's school. APPX VI:1311. However, despite the denials, the Court entered a final decision, modifying the timeshare and adding vacation time to the parties' schedule

without conducting an evidentiary hearing. APPX VI:1311-1312. This appeal followed.

6. Statement of Facts

The parties in this matter have two minor children, Abigail (age eight (8)) and Shawn (age six (6)). APPX I:0010. There were concerns expressed early on in the case regarding domestic violence committed by Devin, as well as drug addiction. APPX I:0023-0024. Initially the Court granted the parties joint legal and joint physical custody on a temporary basis. APPX I:0129-0135. At the hearing on October 16, 2018, the parties stipulated to continuing that timeshare as a final agreement. APPX I:0137-0139. The parties also negotiated a partial agreement in mediation, as to holidays, which was adopted as part of the resolution. APPX I:0137-0139.

Almost immediately after that agreement was entered, there were violations by Devin of the Behavior Order, which the Court put in place after dissolving Amanda's Temporary Protective Order ("TPO"). APPX I:0145-0161.There were also nearly immediate issues pertaining to Child Protective Services ("CPS") involvement with Devin and his withdrawal of consent for Abigail to attend therapy. APPX I:0199-0222. In response, the CPS records were

sought, the Court Ordered that Abigail was to remain in therapy, and Devin was ordered to get a full drug screen. APPX II:0275-0279.

Additional custody Motions, with allegations of medical neglect by Devin, safety issues, and claims by both parties regarding continued parental conflict, were filed within months thereafter. APPX I:0145-0161; I:0223-0225; II:0250-0254; II:0346-0378; II:0466-0489. On April 8, 2019, the Court denied Amanda's request for a custody evaluation and a trial on a change of custody and set deadlines for discovery and pre-trial conferences to move the financial issues forward. APPX II:0412-0413. Amanda filed an additional Motion to modify custody, due to new concerning events related to the children, on July 25, 2019. APPX II:0466-0489. The parties then stipulated to the Custody Evaluation, and the Court set further proceedings, for after the report was finalized, to determine if an evidentiary hearing on custody was warranted. APPX III:0588-0589.

Subsequently, the parties resolved the financial issues at a senior judge conference, with the exception of the pending custody litigation, which was specifically excluded in both the minutes from the conference and the Decree itself. APPX III:0623; III:0634. Two days later, Amanda filed a Motion to adopt the recommendations in the evaluation. APPX III:0705. The evaluation made

several recommendations related to custody, although it did not make a recommendation related to physical custody, because Dr. Paglini was uncertain as to whether the Court could utilize the pre-existing domestic violence. APPX III:0710. Amanda's Motion also addressed further violations of the existing Orders, including ones that post-dated the settlement conference. APPX III:0711-0722. Devin opposed the Motion and a hearing was held on May 13, 2020. APPX IV:0845. The Court issued a Minute Order, entering temporary custody orders (modifying custody to grant Amanda temporary primary physical and sole legal custody) and setting an evidentiary hearing. APPX IV:0837-0840.

Devin thereafter filed his own Motion requesting primary physical custody, claiming that Amanda was a "pathogenic" parent, and that she had acted with poor judgment in dating a man, and allowing him around the children, who they later found out had been molesting Abby. APPX IV:0924-0949. The Court set Devin's countermotion for the trial. APPX V:0996-0997. However, before the trial could be conducted, the case was administratively reassigned to Judge Shell Mercer. APPX V:1130-1131.

On the day of the trial, Judge Mercer vacated the same, finding that *McMonigle* prevented her from conducting a trial on a custody evaluation and

facts which predated the entry of the Decree of Divorce. APPX VI:1411; VI:1413; VI:1417-1423. Judge Mercer did allow the parties to set a status check to see if there were any "post divorce" facts on which they wanted to proceed with modifying custody. APPX VI:1424-1425; VI:1428; VI:1435. Judge Mercer then denied Amanda's Motion for Reconsideration, despite the fact that, at the initial hearing on the same, on April 30, 2021, she acknowledged the provision directing further litigation on custody issues; but did not believe the same to be effective. APPX VII:1442. *See Also* APPX VII:1517-1518. Judge Mercer then denied Devin's request to modify the school the children attended at a status check in June 2021. APPX V:1311. The Court also initially ordered that the custody orders "stand." APPX VI:1268; VI:1278. Thereafter, the Court entered a final decision, modifying the timeshare and adding vacation time to the parties' schedule without conducting an evidentiary hearing. APPX V:1311-1312.

7. <u>Issues</u>

A. The Court erred in finding that there Nevada law prevented the Court from holding an evidentiary hearing on custody under the facts that predated the Decree and vacating the evidentiary hearing as a result.

B. The Court erred in modifying the parties custodial timeshare and vacation provisions without conducting an evidentiary hearing.

C. The Court erred in bifurcating the parties' divorce.

8. Argument

Standard of Review

The district court has "broad discretion concerning child custody matters." *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123, 124 (1993), citing NRS 125.510 (repealed), *Culbertson v. Culbertson*, 91 Nev. 230, 533 P.2d 768 (1975), *Paine v. Paine,* 71 Nev. 262, 287 P.2d 716 (1955). This court will not disturb such determinations absent a clear abuse of discretion. *Ellis v. Carucci,* 123 Nev. 145, 149, 161 P.3d 239, 241 (2007). Abuse of discretion occurs when the decision is "arbitrary or capricious or if it exceeds the bounds of law or reason." *Jackson v. State,* 117 Nev. 116, 120, 17 P.3d 998, 1000 (2001). Further, deference is not owed to legal error. *Davis v. Ewalefo*, 131 Nev. 445, 450, 352 P.3d 1139, 1142-11143 (2015).

"A district court has the discretion to deny a motion to modify custody without holding a hearing unless the moving party demonstrates 'adequate cause' for holding a hearing." *Rooney,* 109 Nev. at 542-543. "'Adequate cause' arises

where the moving party presents a prima facie case for modification. To constitute a prima facie case it must be shown that: (1) the facts alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not mearly cumulative or impeaching." *Id.* at 543.

A. The Court Erred When it Found That Nevada Law Prevented it from Considering the Pre-decree Facts for Modification of Custody and Vacating the Trial on That Basis.

The parties in this case finalized custody by agreement in 2018, substantially before resolving the divorce itself. Not long thereafter, and while the divorce was still pending, additional custody issues arose, including issues which made it apparent that the previously un-litigated domestic violence issues were relevant and important. Because of discovery issues and continuing custody litigation, the parties did not address property and support issues until 2020.

By 2019, the district court was understandably concerned with the length of time the divorce itself had been pending. Under Nevada Law, community property does not end until the Decree of Divorce is entered. *McClintock v. McClintock*, 122 Nev. 842, 138 P.3d 513, 516 (2006). Custody, on the other hand, is always modifiable. NRS 125C.0045. This Court has found that Decrees

of Divorce require that community property be contemporaneously addressed, but has permitted district courts to conduct separate trials and bifurcate cases. *Gojack v. Second Judicial Dist. Ct.,* 95 Nev. 443, 445, 596 P.2d 237, 238-239 (1979). As such the district court directed that the community property to be resolved, so that the Divorce could be finalized. APPX VI:1356-1357; VI:1361. The Court specifically held open the matter of custody, to determine, after a custody evaluation was completed whether there was ample evidence for holding an evidentiary hearing on modifying the original parenting agreement. APPX VI:1356-1357.

Amanda will address the propriety of the Court bifurcating custody herein below. For the purposes of discussing the Court's error in failing to hold the evidentiary hearing and consider the pre-Decree events, the fact that the Court bifurcated the divorce is an accepted fact.

Custody may be modified at any time. NRS 125C.0045. However, prior to modifying custody, the district court must hold an evidentiary hearing and make specific findings of fact. *See Rivero v. Rivero*, 125 Nev. 410, 216 P.3d 213, 226 (2009), *Arcella v. Arcella*, 133 Nev. Ad. Op. 104, 407 P.3d 341 (Nev. 2017). Generally, the evidence presented to the district court must post date the last

Custody Order. *McMonigle*, 110 Nev. at 1408. However, exceptions exist, specifically to address domestic violence. *See Castle v. Simmons*, 120 Nev. 98, 86 P.3d 1042 (2004).

In *Castle*, this Court specifically found that "the doctrine of res judicata...should not be used to preclude parties from introducing evidence of domestic violence that was unknown to a party *or to the court* when the prior custody determination was made." *Id* at 1047 (emphasis added). Therefore a party is permitted to "introduce evidence of domestic violence if the moving party *or the court* was unaware of the existence ***or extent*** of the conduct when the court rendered its prior custody decision." *Id* (emphasis added).

While it bears noting that at the beginning of the case (in 2018), Amanda had filed for a TPO which was initially addressed by a Hearing Master and not the District Court Judge, alleging certain acts of domestic violence, no evidentiary proceeding was held on those allegations.[2] Evidence which has not been put through examination is nothing more than an offer of proof. "An offer of proof obviously is not a proper substitute for the tender of evidence which has

---

[2] The District Court acknowledged the TPO, but did not take evidence. The TPO was not extended a Behavior Order was issued. APPX I:0129-0135.

never been presented and ruled upon." *Southern Pac. Transp. Co., v. Fitzgerald*, 94 Nev. 245, 579 P.2d 1251, 1252 (1978). *See also Rooney,* 853 P.2d at 125, noting that allegations in affidavits and points and authorities are the basis to decide whether or not to *set* an evidentiary hearing. *See also Moser v. Moser,* 108 Nev. 572, 836 P.2d 63 (1992).

It is not disputed that the Court had never taken evidence on the issues of domestic violence. Further, prior incidents of domestic violence may be considered where new incidents occur, so long as there are also new incidents on which to litigate. *Nance v. Ferraro*, 134 Nev. 153, 418 P.3d 679 (Nev.App. 2018). The record is replete with incidents which post date the 2018 parenting agreement, as well as allegations related to other care and custody concerns which post date that agreement. Were the Decree of Divorce to have been completed around the same time as the parenting agreement, there would be no question that those later incidents would be appropriate consideration for the court.

Further, it may be tempting to argue that Amanda's stipulation to the original parenting plan created a presumption that, despite the prior acts of domestic violence, Amanda believed the custody agreement was in the minor

children's best interests. However, such an agreement creates, at best, a rebuttable presumption. NRS 125C.002, "when a court is making a determination regarding the legal custody of a child, there is a presumption, affecting the burden of proof...." NRS 125C.0025, "when a court is making a determination regarding the physical custody of a child, there is a preference..." Therefore, even if this Court, or the district court believed that Amanda's agreement obviated her argument that domestic violence she had been aware of justified a change in custody, the same required the district court to take evidence and determine if Amanda had (1) rebutted the preference/presumption, or (2) if sufficient other evidence supported a finding in the children's best interests to modify in spite of that preference. Since the district court did not conduct an evidentiary hearing, and since there were allegations sufficient to meet the *Rooney* standard which *post-dated* the parenting agreement, this argument is nothing more than a red herring.

What makes this particular case complicated (as well as similar cases, of which there are several at any given time), is the nature of how divorce cases with custody issues are resolved. Custody matters are generally decided separately from, and prior to, property and financial matters. Like this case, that occasionally means that custody issues may be "resolved" more than a year

before a Decree of Divorce is prepared. The legislature clearly anticipated that because of the potential issues related to time, custody matters may need to be revised prior to entry of the Decree itself - despite a so-called "final agreement."[3] *See* NRS 125C.0045.

Further, this Court has addressed the impact of a "savings clause" relating to custody, such as the one in this case, on a Decree. In *Ellet v. Ellet*, 94 Nev. 34, 573 P.2d 1179 (1978), this Court stated, "[a]n order or judgment which reserves a question for future consideration and determination is interlocutory and is not a final judgment." It is clear therefore, that the Decree of Divorce in this case is interlocutory and therefore the custody orders therein are temporary, pending further proceedings. *See Barry v. Linder*, 81 P.3d 537, 542 (2003).

As such, the custodial terms set forth in the Decree (reflecting the Order from which a Motion to Modify was already pending), constituted an interlocutory order, and the same does not implicate *McMonigle*. The Decree is not a bar to hearing the facts on which the Motions to Modify were predicated,

---

[3] Of course, no Custody Order is ever truly "final," as the Court maintains continued jurisdiction to modify custody until the minor children turn 18. *See* NRS 125C.0045(1)(b); *Mizrachi v. Mizrachi,* 132 Nev. 666, 385 P.3d 982, 986 (Nev.App. 2016).

as they clearing post-dated the "final" order, and the issues were held open for consideration. The district court erred by refusing to hold the evidentiary hearing, and by restricting the possible presentation of evidence regarding any modification of custody to that evidence which existed only after entry of the Decree itself.

B. The Court Erred in Modifying the Timeshare and Vacation Provision Without an Evidentiary Hearing.

"A court decision regarding visitation is a 'custody determination.'" *Wallace v. Wallace,* 112 Nev. 1015, 922 P.2d 541, 543 (1996). A visitation schedule must be in the best interests of a child. *Id. See also* NRS 125C.010(1)(a). Whenever the Court modifies any aspect of custody, the court must making findings related to the children's best interests. *Mizrachi,* 385 P.3d at 986-987. *See also Miller v. Dussault,* 373 P.3d 943 (Table) (Nev. 2011).

Most of the cases which address modification of a timeshare, also involve modifying the custodial designation as well, despite the fact that it is entirely possible for the Court to modify the timeshare that exists without changing the custodial definition. That specific scenario existed in the case of *Gordon v. Geiger*, 133 Nev. Ad. Op. 69, 402 P.3d 671 (Nev. 2017). Therein, the mother

filed a motion for an Order to Show Cause on custody and support violations, as well as to modify custody. The Court set an evidentiary hearing on the Order to Show Cause. At the time of the Evidentiary Hearing, the Court further clarified that the same was to hear from the father's probation officer regarding the warrant for his arrest, which formed part of the basis for the request for the Order to Show Cause. The Court specifically acknowledged the pending motion to modify custody, but limited the trial to address the probation issues, which led to a determination on the Motion for *legal* custody and child support issues.[4] At the close of the evidentiary hearing, the father's counsel made an oral request to expand his visitation, although he had not previously made a request to modify custody. Just as Judge Mercer did in this case, the judge in *Gordon* denied the Motion, but then *sua sponte* modified the timeshare and expanded the father's time. The district court in *Gordon* based the order on an unrecorded child interview and CPS reports. As Judge Mercer did, the district court in *Gordon* denied the mother's request for reconsideration.

This Court, in considering the district court's order in *Gordon* found that the district court had violated the mother's due process rights, as she had received

---

[4] The Court did allow the father to testify to financial matters.

no notice that the father would be requesting an increase in visitation, and "she was not afforded the opportunity to be heard and rebut the evidence upon which the district court relied." *Id* at 674. This Court also noted that, "the district court's findings are not supported by substantial evidence due to the fact that the court relied upon the unrecorded child interviews and the unsubstantiated CPS report, neither of which were admitted into *evidence*." *Id* at 675 (emphasis added).

In this case, Judge Mercer's *sua sponte* decision had even less support under Nevada Law. Although Judge Mercer ultimately concluded that her modification of the schedule was in the minor children's best interest, because the number of exchanges allowed for increased conflict, she stated very clearly at multiple points that she was modifying the schedule because she "[didn't] like the schedule." APPX VII:1536-1537. That is hardly an appropriate basis for modification. Further, although she ultimately made a single "finding" (without taking evidence or conducting a hearing), that arguably fell within NRS 125C.0035(4)(d) - the level of conflict between the parents - she did not address any other factor in her decision. APPX VII:1537. The Court is required to address each of the factors set forth in NRS 125C.0035(4), and any other relevant

factors in making a decision regarding a child's best interests. *Davis*, 352 P.3d at 1143-1144; *Nance*, 418 P.3d at 687.

Judge Mercer's addition of vacation time was similarly inappropriate under Nevada law. Adding a provision which did not previously exist is absolutely a substantial adjustment to the parties' rights and therefore clearly a modification. *Mizrachi,* supra. Mother made allegations, in response to Judge Mercer's request to understand why there was no vacation provision, that the exclusion was intentional and negotiated. Under *Rooney*, supra, the Court had an obligation therefore, to take evidence on that issue. Instead, Judge Mercer simply stated that she "[thought] that both parties should be allowed to have vacation time" and added the provision. APPX VII:1543-1546.

It is perhaps most distressing that Judge Mercer made repeated comments that if Devin's counsel continued to offer evidence to justify his request to modify the timeshare and add vacation time, she would be required to set an evidentiary hearing. APPX VII:1536; VII:1542. It is completely apparent that Judge Mercer understood that allegations in support of modifications to the timeshare and custody provisions *required* an evidentiary hearing, and therefore she failed to rely on evidence in making her *sua sponte* orders.

The Court is required to hold an evidentiary hearing prior to making decisions to modify custody. *Rooney,* supra; *Arcella,* supra. The Court's *sua sponte* Orders modifying the timeshare and adding a vacation provision to the parties custodial arrangement was improper under Nevada Law. The Court's orders violated Amanda's due process rights, and were decided both without proper consideration of the best interest factors and without taking evidence. The Court erred and the orders modifying the timeshare and adding a vacation provision should be vacated, and the matter remanded for the Court to hold an evidentiary hearing on the modification of the timeshare and any other provisions which either party requests the court to add or modify.

C. The Court Erred in Bifurcating the Parties Divorce

This Court has addressed the propriety of bifurcating divorce cases only a handful of times. Bifurcation has been permitted of *trials* in divorce cases, however, the Court noted that the Divorce Decree *must* contemporaneously determine "property and related rights and responsibilities of the parties." *Gojack*, 596 P.2d at 239. *See also Smith v. Smith,* 100 Nev. 610, 691 P.2d 428, 431 (1984); *Ellett,* supra. *Gojack* does not specifically address custody -- however the language presumably indicates the custody too must have a final

determination in a Divorce Decree. As *Gojack* notes, "a judgement of divorce shall be a final decree...[and] shall fully and completely dissolve the marriage contract as to the parties." *Id.* As set forth above, a Decree which leaves open issues for future consideration is interlocutory and not final. *Gojack* warned against the issues an interlocutory divorce decree could create, noting "such a departure would lead to numerous problems inevitably flowing from an interim divorce decree..." *Id.* Those problems are clearly highlighted in the issues addressed in this appeal.

While bifurcation of trials is permitted, that is not what happened in this case, nor was it the district court's intent. Judge Gentile clearly stated that she wanted to "get these parties divorced," APPX VI:1361. This statement was made *during* the hearing where it was determined that the Court would review Dr. Paglini's report to determine if an evidentiary hearing to modify custody was appropriate. The district court even made it clear that custody would not be considered resolved in the Decree, and the savings clause in the minutes from the settlement conference and in the Decree itself support that conclusion as well. APPX III:0634. It is abundantly clear, that the Court bifurcated custody from the divorce.

While the Court has not specifically addressed the propriety of bifurcating custody, *Gojack* is still applicable. Where the parties are going through a divorce it is important that all related issues (other than enforcement) need to be addressed in the Decree, especially in light of the case law for modification and the difference between temporary, interlocutory Orders and final Orders.

The district court erred when it bifurcated the divorce.

Amanda acknowledges that this may be a harmless error, as the same will not be relevant, should this Court determine that the district court erred in failing to (1) hold an evidentiary hearing on the modification of custody and (2) in failing to consider the post-parenting agreement, but pre-decree, facts in its analysis. However, the error has complicated this process, and necessitated this appeal, and therefore Amanda believes it is important for this Court to clarify that bifurcation of custody from the divorce decree is improper and the Court erred in doing so.

9. <u>Issues of First Impression</u>

There are no issues of first impression.

10. Conclusion

Based on the foregoing, Amanda requests that this Court find the district court erred in its Order finding that an evidentiary hearing to modify custody could not be based on facts which predated the interlocutory decree, in modifying custody *sua sponte* without an evidentiary hearing, and in bifurcating the divorce. Amanda requests this Court reverse and remand the matter to the district court for an evidentiary hearing on custody and order that the district court consider all evidence which post-dates the 2018 parenting agreement.

By: _____
RACHEAL H. MASTEL, ESQ.,
Nevada Bar No. 11646
Attorney for Respondent

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this fast track statement 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 Word Perfect X5 in 14-point Times New Roman style;

2. I further certify that this fast track response complies with the page- or type-volume limitations of NRAP 3E(e)(2) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), because it is proportionately spaced, has a typeface of 14 points or more, and contains 4826 words;

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track response and that the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track response. I therefor 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 10 day of January, 2021.

By: _____
RACHEAL H. MASTEL, ESQ.,
Nevada Bar No. 11646
KAINEN LAW GROUP, PLLC
3303 Novat Street, Suite 200
Las Vegas, Nevada 89117
(702) 823-4900
Attorney for Respondent

CERTIFICATE OF SERVICE

I the undersigned hereby certify that I am an employee of the KAINEN LAW GROUP, PLLC, located at 3303 Novat Street, Suite 200, Las Vegas, Nevada 89129, and on the 10 day of January, 2021, I served a true and correct copy of the ***Appellant's Child Custody Fast Track Statement*** on all interested parties to this action as follows:

_____ Depositing in a sealed envelope placed for collection and mailing in the United States Mail, via 1st class, postage prepaid, at Las Vegas, Nevada, following ordinary business practices:

_____ Personal Delivery:

_____ Facsimile:.

_____ Overnight delivery via Federal Express or other postal carrier:

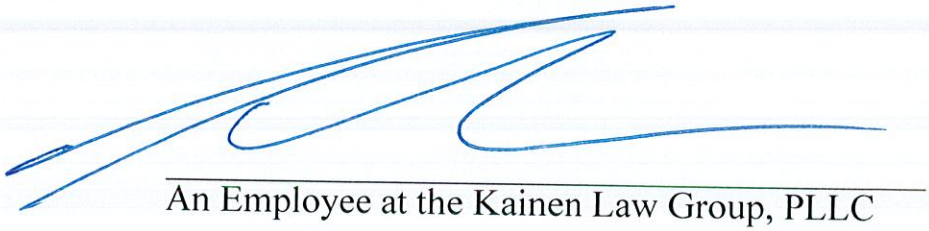
_____ Certified Mail with Return Receipt Requested:

__✓__ Electronically through the Court's ECF system:

Michancy Cramer

Alex Ghibaudo

_____ Email:



An Employee at the Kainen Law Group, PLLC