

1 clearly meets the standard outlined in *Southwest Gas*.

2       This Court's Orders are clear and unambiguous. The parties agreed and the  
3 Order from October 16, 2018, clearly states that Jacob is to have no overnights  
4 during Devin's custodial time. The Order from August 14, 2018, clearly states  
5 that the parties are to communicate only via Our Family Wizard. The parties are  
6 to abide by the Mutual Behavior Order, which prohibits the parties from  
7 "provid[ing], either directly or through third parties, copies of any unsolicited  
8 documents (personal letters, court pleadings, etc.) to anyone associated with a  
9 party (family members, neighbors, employers, etc.) for the intended purpose of  
10 casting the other party in a negative light and from abusive contact with the other  
11 party. The Order from October 16, 2018, requires that the parties take the  
12 children to their extra-curricular activities and the financial orders in the Decree of  
13 Divorce are clear.

14       As noted above, Devin continues to allow Jacob to have overnights during  
15 his custodial time; send Amanda text messages; violate the Mutual Behavior  
16 Order; refuse to take the children to their extra-curricular activities; and not pay  
17 his financial obligations. Devin's behavior has been the same through the entirety  
18 of this more than two-year litigation; this is the third Motion for an Order to Show  
19 Cause Amanda has been forced to file. It seems nothing this Court does can get  
20 him to stop, as he has been in front of this Court numerous times on this same  
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1 issue and he continues to violate the Court's orders.

2       Given his repeated violations of this Court's orders, Devin should be held  
3 in contempt, and fined \$500.00 for each violation of the Court's Orders.  
4 Specifically, he should be fined for one (1) violation related to allowing Jacob  
5 continued overnights; three (3) violations for sending text message to Amanda;  
6 twelve (12) violations of the Mutual Behavior Order; five (5) violations of not  
7 taking the children to extracurricular activities; and three (3) violations of  
8 financial orders, for a total of twenty-four (24) violations, and a total fine of  
9 \$12,000.00. Amanda understands that this may seem like a harsh penalty, but  
10 something must be done to show Devin that the Court's Orders must be obeyed  
11 and he cannot simply continue to do whatever he pleases.  
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15       C. Custody should be modified so as to award Amanda with primary  
16       physical custody.

17       Where joint legal and physical custody has previously been awarded to the  
18 parties, the party seeking the modification must prove by a preponderance of the  
19 evidence that the best interests of the child would be served by granting the  
20 requesting party primary or sole physical custody. *Truax v. Truax*, 110 Nev. 437  
21 (1994). Because the principals of *res judicata* still apply, *Truax* does not provide  
22 litigants with the ability to re-litigate the issues based on the same set of facts or  
23 circumstances. However, the Nevada Supreme Court has held in *Castle v.*  
24 *Simmons*, 86 P.3d 1042 (2004), that "a party seeking to change custody may  
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1 introduce evidence of domestic violence if he or she **or the district court** was  
2 unaware of the existence or extent of the conduct when the prior custody order  
3 was entered.” *Id.* at 1044, emphasis added.  
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5 Pursuant to NRS 125C.230(1), where a court has found by clear and  
6 convincing evidence that either parent or any other person seeking custody of a  
7 child has engaged in one or more acts of domestic violence against the child, a  
8 parent of the child or any other person residing with the child, there arises a  
9 rebuttable presumption that sole or joint custody of the child by the perpetrator of  
10 the domestic violence is not in the best interest of the child. Moreover, in all  
11 cases where the Court must determine physical custody of a minor child, the sole  
12 consideration of the Court must be the best interest of the child, which is  
13 determined by considering the statutory provisions of NRS 125C.0035(4) to  
14 determine whether modification serves the child’s best interest.  
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18 As noted above, Devin engaged in numerous acts of domestic violence  
19 against Amanda during the parties’ marriage, the extent of which was never  
20 presented to this Court. As Amanda was advised by her prior counsel that she  
21 should stipulate to joint physical custody, the extent of the domestic violence was  
22 never presented to the Court nor was it divulged to undersigned counsel until long  
23 after the current custody order was entered. As discussed and acknowledged by  
24 this Court at the January 29, 2020, hearing, this Court may consider evidence of  
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1 domestic violence when such domestic violence was never considered by the  
2 Court in making the previous custody determination.

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4 As was the case in *Castle*, Amanda is prepared to present extensive  
5 evidence, including recordings, medical records, and statements from individuals  
6 to whom Amanda disclosed the domestic violence, to prove by clear and  
7 convincing evidence that the domestic violence did occur, and was often  
8 witnessed by the minor children. Devin's extensive domestic violence and the  
9 direct evidence thereof was presented to Dr. Paglini and confirmed in his report to  
10 be continuous and of great concern.  
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13 In addition to the rebuttable presumption that will arise when Amanda  
14 presents evidence of the domestic violence to the Court, an evaluation of the best  
15 interest factors, outlined below, clearly shows that it is in the children's best  
16 interest that Amanda be awarded primary physical custody.  
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18 (a) The wishes of the child if the child is of sufficient age and capacity to  
19 form an intelligent preference as to his or her custody.

20 The minor children are only four (4) and seven (7) years old, and are not of  
21 sufficient age and capacity to form an intelligent preference as to their custody.  
22 However, the oldest child, Abby, has indicated to Amanda on numerous occasions  
23 that she is afraid of Devin, and becomes hysterical when she has to go with him  
24 for his custodial time.  
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1 (c) Which parent is more likely to allow the child to have frequent  
2 associations and a continuing relationship with the noncustodial parent.

3 Amanda has never withheld the minor children from Devin, despite his  
4 history of domestic violence, continued violations of the existing orders, and even  
5 instances of him picking up the minor children without appropriate child seats in  
6 his car. As the Court will see in reviewing videos of the custodial exchanges,  
7 Amanda encourages Abby to go with Devin, even when the minor child is crying  
8 hysterically and clinging to her leg.  
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10 (d) The level of conflict between the parents.

11 The conflict between the parties is extremely high. Devin continues to  
12 mentally abuse and manipulate Amanda, using the children as pawns to get from  
13 her what he wants. As noted above regarding extracurricular activities, Devin  
14 will refuse to take the children or otherwise comply with the Court's orders or  
15 agreements between the parties if he is upset with Amanda or perceives that she  
16 has somehow wronged him. Devin continues to send harassing and abusive  
17 messages to Amanda via text message and Our Family Wizard, and is extremely  
18 combative at custodial exchanges.  
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21 (e) The ability of the parents to cooperate to meet the needs of the child.

22 While the needs of the children are met during Amanda's custodial time,  
23 Devin fails to meet the children's needs and does not cooperate with Amanda in  
24 any way. As noted in detail above, the children do not brush their teeth during  
25 Devin's custodial time, and arrive at school every single day in dirty, ill-fitting  
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1 clothes, with food on their faces and not having been allowed to use the bathroom.  
2 During Devin's weekend custodial time, the children often do not change their  
3 underwear or clothing over the course of the three (3) days.  
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5 (f) The mental and physical health of the parents.

6 Amanda does not have any mental or physical health concerns. Dr.  
7 Paglini's report specifically states, at page 47, that Amanda has no evidence of  
8 antisocial personality trait or sociopathy."  
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10 While Devin does not have any diagnosed mental health concerns, Dr.  
11 Paglini noted, page 49 of his report, that Devin exhibits narcissistic personality  
12 traits and a history of domestic violence tendencies. He continues to engage in  
13 abusive behavior, violating this Court's orders, using the children as pawns, and  
14 acting contrary to their best interest. During the custody evaluation, even when  
15 presented with direct evidence of his domestic violence against Amanda, Devin  
16 insisted that no domestic violence ever occurred. Whether he is simply lying or  
17 truly believes this to be the case, it is clear that he is in some way disconnected  
18 from reality.  
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22 (g) The physical, developmental and emotional needs of the child.

23 Neither of the children have any significant physical or developmental, or.  
24 However, Abby and Shawn are only four (4) and seven (7) years old and still  
25 require significant care from a parent on a consistent basis. They require a parent  
26 to brush their teeth, bathe them, ensure they have clean clothes, and allow them  
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1 the ability to use the bathroom. These basic needs of the minor children are not  
2 met during Devin's custodial time.

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4 Regarding their emotional needs, Abby, at only seven (7) years old, is  
5 already an extremely anxious child, who requires ongoing therapy to deal with the  
6 trauma she has already experienced in her childhood. As outlined above and in  
7 Dr. Paglini's report, this trauma is a result of the domestic violence committed  
8 against Amanda by Devin.  
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10 (h) The nature of the relationship of the child with each parent.

11 The children love both of their parents. However, as noted above, the  
12 children are afraid of Devin due to the domestic violence they have witnessed and  
13 the fact that Devin is quick to anger and threaten them for behavior that is  
14 common to children, i.e. moving around in their sleep.  
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16 (i) The ability of the child to maintain a relationship with any sibling.

17 This factor is not relevant.

18 (j) Any history of parental abuse or neglect of the child or a sibling of the  
19 child.

20 As previously briefed before this Court and noted above, Devin does not  
21 care for the children as they should be cared for. Devin seldom bathes the  
22 children, almost never brushes their teeth, and does not properly administer  
23 medication. Moreover, Devin has two (2) substantiations from CPS regarding  
24 child abuse, specifically a substantiation in 2006 for Domestic Violence against  
25 two (2) of his sons and a substantiation in 2009 for physical abuse/bruising to his  
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1 son Jacob.

2 (k) Whether either parent or any other person seeking custody has engaged  
3 in an act of domestic violence against the child, a parent of the child or any  
4 other person residing with the child.

5 As noted above and the catalyst for the instant request to modify custody,  
6 there have been numerous incidents of domestic battery between the parties,  
7 including Devin attempting to choke and rape Amanda. In addition to the physical  
8 abuse, there is continued mental and verbal abuse by Devin, even throughout the  
9 instant litigation. Until Devin can get his anger and rage towards Amanda under  
10 control, Amanda feels like he is a ticking time-bomb. Amanda is prepared to  
11 introduce recordings of Devin's domestic violence against her at the time of trial in  
12 this matter, which evidence has already been presented to Dr. Paglini during the  
13 custodial evaluation.  
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17 (l) Whether either parent or any other person seeking custody has  
18 committed any act of abduction against the child or any other child.

19 This factor is not relevant.

20 The above analysis of the relevant statutory factors shows that it is in the  
21 minor children's best interest for Amanda to be awarded primary physical  
22 custody. The parties have extremely high conflict, are unable to work together to  
23 meet the needs of the children, and Devin is unable to even meet the children's  
24 most basic needs during his custodial time.  
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