

1 order. She is not doing what she's supposed to be doing. The
2 -- she talks about the dirty clothes and the clothes that
3 don't fit, and this -- I don't know why parents do this to
4 their children, and I think it's an abominable situation in which Dad buys clothes for the kids, and then he
5 just sends them home in whatever they're wearing.
6

7 He sends them, you know, back to school, back to
8 Mom. And when Mom sends them to him, she literally brings
9 clothing to the school, because she's a teacher there. She
10 brings their old clothes, takes them out of the new clothes,
11 puts them in the old clothes, and sends them to Dad's house.
12 So when Dad gets them back from Mom, they're in old clothes
13 that don't fit them anymore.

14 And she keeps all the new clothes that he buys. So
15 in the last winter alone, Mom kept four jackets that Dad
16 purchased for the kids. She -- he's never seen them again.
17 And Mom is restricting the children's ability to carry items
18 back and forth. And so this is turning into a situation where
19 Dad is constantly replacing clothes, and then sending them
20 back to Mom in the new clothes, and Mom sends them back in old
21 clothes that don't fit them anymore.

22 And it's happened like, every month. And it's
23 getting to the point where, like, he certainly can't afford
24 that any more, Your Honor. And he's the one paying her child

1 support, and he can't afford to do this. And so this -- this
2 allegation that he's doing something wrong with the clothing
3 is absolutely false, Your Honor.

4 We need an order that these children be allowed to
5 wear what they are wearing to school that day, wear to their
6 dad's house. We need an order that they are allowed to freely
7 transport their belongings between the parties, or between the
8 parties' homes. It needs to stop.

9 And then the -- with the allegation regarding
10 Safekey, that -- that Abby ran and hid, Mom is -- is not being
11 honest with you, Your Honor. Abby did not run and hide in a
12 hallway in the school. Abby went to Mom's classroom, and Mom
13 and her dad were there, and Abby was there, and they locked
14 the door. So when Devin went to get Abby, they refused to
15 unlock the door and let her out. And so Dad had to go get
16 staff to unlock Mom's classroom, and there was Mom and grandpa
17 and Abby.

18 And -- and I mean, this is -- this is -- I don't
19 even have a word for it, Your Honor. The -- the -- the level
20 of deception to the Court is appalling. But the fact that she
21 would do that is so pathogenic. There is something seriously
22 wrong with her, Your Honor, and it needs to stop. It really
23 does.

24 And so that is why we are asking that she be deemed

1 a vexatious litigant, and that Dr. Paglini's report cannot be
2 implemented. It absolutely cannot. If Your Honor is so
3 inclined to take it seriously on any level, we have to have an
4 evidentiary hearing. They can't simply modify custody like
5 this.

6 And then we're going to have a full hearing, and
7 we're going to have a full prove up on the extent of Mom's
8 relationship with this molester. We're going to have a full
9 hearing and prove up on these -- these therapy appointments.
10 You can see these videos for yourself, Your Honor. You can
11 see Mom's behavior. And if I have to, I'll subpoena the staff
12 at school who can testify that they had to unlock the door. I
13 mean, because this is getting outrageous.

14 THE COURT: Okay. Well, you're right, and I can't
15 permanently change custody without an evidentiary hearing. I
16 think that's what Ms. Primas's assertions are. But if I set
17 an evidentiary hearing, and I find that the allegations aren't
18 substantiated by the evidence and that the evidence is what
19 you're saying, Ms. Cramer, then, you know, attorney's fees
20 would be awarded, and --

21 MS. CRAMER: Well --

22 THE COURT: -- and --

23 MS. CRAMER: -- and, Your Honor --

24 THE COURT: -- I think (indiscernible).

1 MS. CRAMER: Yeah. Not only that, but I mean, after
2 I looked at this, because, you know, he was proceeding pro se
3 before he hired me to handle this hearing --

4 THE COURT: Uh-huh.

5 MS. CRAMER: -- and looking at this, Your Honor, if
6 -- if -- if Your Honor's inclined to -- to grant her any of
7 the relief requested, we're looking at our own motion to
8 modify. This -- this custody order is ridiculous. There's
9 multiple exchanges, and there should be minimal exchanges for
10 the welfare of these children. And Mom talks about Dad having
11 a gun, I guess Your Honor's never been told, but, you know,
12 Mom's dad pulled a gun on Devin during an exchange when they
13 were getting divorced.

14 THE COURT: Uh-huh.

15 MS. CRAMER: It -- it -- there's -- Mom's dad should
16 not be involved. He needs to stay away. The therapy
17 appointments are problematic because she -- like I said, she
18 constructively excludes him from them. And --

19 THE COURT: Can I interrupt real quickly? What are
20 the -- what is the day that the appointments happen?

21 MS. CRAMER: It's on Monday.

22 THE COURT: On Mondays. Okay.

23 MS. CRAMER: And the kids go back to Mom at school
24 on Monday, so then she takes her after school.

1 THE COURT: Time -- what time is the therapy
2 appointment? Same time every Monday?
3 MS. CRAMER: I believe so.
4 THE COURT: Ms. Primas?
5 MS. CRAMER: (Indiscernible).
6 MS. PRIMAS: It -- it's the same time every Monday.
7 THE COURT: What time?
8 MS. PRIMAS: It's at --
9 MS. CRAMER: (Indiscernible) --
10 THE COURT: I'm sorry? What time?
11 MS. CRAMER: It's at 5:00 or 6:00 in the evening,
12 Your Honor.
13 THE COURT: I -- I -- I want to hear from
14 Ms. Primas. Do you know the time?
15 MS. PRIMAS: Amanda, what time is her therapy?
16 THE DEFENDANT: It's usually at 5:45, but due to the
17 -- the COVID, we've been just doing virtual meetings the last
18 three or four weeks.
19 THE COURT: Uh-huh. And what time --
20 THE DEFENDANT: It's -- it's random, because her
21 schedule changes. But when -- when we go back, it's Monday at
22 5:45.
23 THE COURT: Okay. All right. Ladies, I -- is there
24 anything else? Because I -- I have a -- I'm going to have my

1 next hearing. I'm going to go back and look at all of your
2 filings again, and I'm going to issue an order this afternoon
3 as to what I want to do. I'll consider the arguments because
4 they have been very informative, and that will help me make a
5 final decision on this one.

6 MS. PRIMAS: (Indiscernible) a couple of things,
7 Your Honor? I just wanted to respond to just a few things --

8 THE COURT: Sure.

9 MS. PRIMAS: -- real quick.

10 THE COURT: Sure.

11 MS. PRIMAS: The issue about Mr. Eatherly, I never
12 said he was a random handyman. He was Mom's boyfriend a
13 couple years ago. He continued to be her friend. I said he
14 had her garage code because he acted like her handyman. But
15 they continued to be friends. So yes, they were sitting
16 together at sporting events.

17 The -- the argument that the domestic violence
18 incidents were just arguments between the parties, this is why
19 we're asking for an evidentiary hearing, Your Honor. Because
20 the Court has never considered the evidence as the domestic
21 violence.

22 The violation of the mutual behavior order, Ms.
23 Cramer says that there was one angry text after Dad found out
24 about the incident with Abby, and that it was a one off. But

1 obviously, it wasn't. We again, attached numerous messages on
2 Our Family Wizard, and texts as violations of the mutual
3 behavior order.

4 The issue of Jacob, we -- we have covered this, Your
5 Honor. There are numerous reasons. He -- he is violent, he
6 had diaries about raping women and killing my client when the
7 parties were together. Your Honor has heard all of this
8 before, as you referenced.

9 THE COURT: Yep.

10 MS. PRIMAS: As for the vexatious litigant, it -- as
11 Your Honor knows, you -- at the last hearing, you indicated
12 that I would need to file a motion to move forward, and so
13 here we are. And then the issue of grandpa pulling a gun on
14 Dad, and that has been addressed by this Court. Dad alleged
15 that grandpa pulled a gun. He called the police, the police
16 came. Grandpa produced a gun from his glove box. It was not
17 at all the gun that Dad described. The police determined that
18 Dad was lying. And again, this Court has addressed that
19 issue. I believe that's it, Your Honor.

20 THE COURT: Okay. All right.

21 MS. CRAMER: Your Honor, if I may --

22 THE COURT: Yes?

23 MS. CRAMER: So we deny the allegations about Jacob.
24 There's no evidence of that. That's false. And my client

1 indicated to me while Ms. Primas was talking that Mom may deny
2 that he was her boyfriend, but Dad says that the kids talked
3 about him constantly, all the time leading up to the arrest.
4 He was around all the time.

5 And as far as grandpa pulling the gun, Mom actually
6 hid the gun that grandpa pulled on him. So grandpa had a
7 second gun in his Jeep. And so when the cops showed up,
8 grandpa says, yeah, there's a gun in my car, and he pulls it
9 out. And no, of course, it's not the gun that Dad described
10 because Mom took that gun in the house and hid it. And the
11 cops can't go into Mom's house without a warrant. So I mean,
12 she -- she covered that up quite nicely, kudos to her. I'm
13 glad she's, you know, venturing into the criminal side of
14 things. But that's what happened on that incident.

15 THE COURT: Okay.

16 MS. CRAMER: And so it's never been addressed in an
17 evidentiary hearing. The Court can hear testimony about that,
18 and hear what happened. That she walked up to her dad, she
19 put the gun in her waistband, and she hid it and went in the
20 house and -- and hid it away from the cops.

21 THE COURT: Uh-huh. Okay. All right. Well, I will
22 -- I'm going to think about this, and I will get something out
23 this afternoon.

24 MS. PRIMAS: All right. Thank you, Your Honor.

1 THE COURT: I have to have my next hearing, so I
2 will let you go. We'll go off the record, and you'll get
3 (indiscernible) from my clerk. Okay?

4 MS. CRAMER: Thank you, Your Honor. Have a good
5 day.

6 THE COURT: Thanks, ladies. Bye.

7 MS. PRIMAS: Bye.

8 THE DEFENDANT: Bye.

9

10 (PROCEEDINGS CONCLUDED AT 10:41:32)

11 * * * * *

12 ATTEST: I do hereby certify that I have truly and
13 correctly transcribed the digital proceedings in the
14 above-entitled case to the best of my ability.

15

16

17 /s/ Nita Painter
Nita Painter

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EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

DEVIN BRYSON REED,

Plaintiff,

vs.

AMANDA RAELENE REED,

Defendant.

CASE NO. D-18-568055-D

APPEAL NO. 83354, 79095

DEPT. Z

BEFORE THE HONORABLE SHELL MERCER
DISTRICT COURT JUDGE

TRANSCRIPT RE: NON-JURY TRIAL

THURSDAY, FEBRUARY 25, 2021

D-8-568055-D REED 02/25/2021 TRANSCRIPT
VERBATIM REPORTING & TRANSCRIPTION, LLC (520) 303-7356

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2 (Participants appear virtually)

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1 LAS VEGAS, NEVADA

THURSDAY, FEBRUARY 25, 2021

2 P R O C E E D I N G S

3 (The following transcript contains multiple indiscernibles
4 due to poor recording quality)

5 (THE PROCEEDINGS BEGAN AT 09:03:20)

6
7 THE COURT: Good morning. In the -- in the matter
8 of Reed versus Reed, case D-18-568055-D, please state your
9 appearances. I don't see anybody.

10 MS. CRAMER: Good morning, Your Honor. This is
11 Michancy Cramer, 11545, for the Plaintiff. He's with me in my
12 office.

13 THE COURT: Okay.

14 MS. CRAMER: I don't see the other side logged in.

15 THE COURT: Well, I saw them just moments ago. But
16 I don't see them now. We should all be in a breakout room,
17 because this case is sealed. And I don't -- I saw the other
18 side shortly ago, but I don't see them now. I think we should
19 go off the record.

20 THE CLERK: Okay.

21 MS. CRAMER: Okay.

22 (COURT RECESSED AT 9:04:21 AND RESUMED AT 9:07:15)

23 THE COURT: In the matter of Reed versus Reed, case
24 D-18-568055-D, please state your appearances for the record.

1 We'll start with Plaintiff.

2 MS. CRAMER: Good morning, Your Honor. This is
3 Michancy Cramer, bar number 11545, for the Plaintiff, who's
4 with me in my office.

5 THE COURT: Good morning, welcome.

6 MR. NAIMI: Good morning, Your Honor. Jason Naimi,
7 bar number 9441, on behalf of the Defendant, Ms. Amanda Reed,
8 who's present with me here on the same video conference. And
9 also with me is Carrie Primas --

10 MS. PRIMAS: Bar number 12071, Your Honor.

11 THE COURT: Okay. Good morning, everybody, and
12 welcome. We are here for the evidentiary hearing of this
13 matter, and the -- the -- the issue that's glaring at me --
14 I've read the pretrial memo -- memos, and I'm -- I -- I need
15 -- Mr. Naimi, I need you to explain -- or Ms. Primas, I need
16 you all to explain to me why this case gets past McMonigle.

17 The McMonigle case -- McMonigle v. McMonigle, 110
18 Nev. 1407, 887 P.2d 742, 1994. McMonigle says that a change
19 of custody must be based on substantially changed
20 circumstances occurring since most recent custodial order. So
21 events that took place before the last custodial order are
22 inadmissible to establish a change of circumstance, and your
23 pretrial memo is all filled with events that occurred before
24 your client entered into a stipulated decree of divorce.

1 MR. NAIMI: Well, Your Honor, I'm happy to address
2 that if I (indiscernible). First and foremost, Your Honor,
3 though you accurately cite McMonigle with regard to
4 allegations of domestic violence, if you look at the Castle
5 exception -- the exceptions under the Castle case, and more
6 recently the Nance versus Nance case, that's N-a-n-c-e, which
7 ironically enough was a case that I was counsel on and before
8 the preceding judge on this matter. Nance directs the Court
9 that they must consider acts of domestic violence if they have
10 never been adjudicated in court at a prior time. So despite
11 the fact that a stipulated order was entered, the Court -- and
12 -- and if you actually were to look back, at one point, the
13 Honorable Judge Gentile mentions the Nance case in this case,
14 and says, I have to consider it.

15 Moreover, if you look at the procedural history of
16 this matter, Your Honor, there was a minute order entered by
17 Judge Gentile on August 27th of '19, wherein she says -- well,
18 first, the parties agreed that a custody evaluation will be
19 performed by Dr. Paglini. And -- and then from there, Judge
20 Gentile says that if there are no issues found through the
21 evaluation conducted by Dr. Paglini, that the custodial time
22 share at that time would remain in effect. However, if upon
23 returning to court there was a determination through the
24 evaluation of Dr. Paglini that there was enough to proceed,

1 she would set it for an evidentiary hearing.

2 What ended up happening was that conduct --

3 Dr. Paglini conducted his evaluation, Carrie Primas, who was
4 the attorney of record solely at the time, filed a motion
5 because of the outcome of that report, which will -- will be
6 present, presented to you here today. And ultimately, at the
7 hearing on May 13th of 2000 (sic) not only did Judge Gentile
8 set this for an evidentiary hearing (indiscernible) the -- the
9 recommendations made by Dr. Paglini, she in her minute order
10 states that she echoed the concerns that Dr. Paglini raised in
11 his report, and that's why she set it for an evidentiary
12 hearing here today.

13 Moreover, she also modified that time share at that
14 time, so as of May 13th, 2020, though she didn't specify the
15 custodial order, the time share that the parties have been
16 adhering to since May 13th of 2020, effectively gives my
17 client primary physical custody, with Mr. Reed having
18 visitation as follows. On Saturday -- on the first week, he
19 has Saturday at noon until Monday at 7:00 p.m. The reason it
20 was set for 7:00 p.m. was because the -- one of the minor
21 children, Abigail, the seven year old in this case, has been
22 going to therapy with Dr. Schaffer (ph). Dr. Schaffer will
23 testify to what that is about.

24 Dad was to be involved in that therapy, and so

1 doctor -- Judge Gentile made it clear, I'm giving you until
2 Monday at 7:00 on this week because you are to go to every
3 single appointment that you have her on those Mondays for the
4 therapy in person. If you miss one, I'm going to reduce your
5 time even further. So that was the first week.

6 The second week was from Friday until Monday -- from
7 Friday evening until Monday morning, where he was supposed to
8 bring the children to school at 7:00 a.m. So I believe based
9 on what I've presented to the Court here, that makes it
10 obvious that the Rooney standard has been overcome. McMonigle
11 does not apply in lieu of the Nance case, and there's a reason
12 why Judge Gentile set this for an evidentiary hearing that has
13 now -- what is -- that is now here today. Thank you.

14 THE COURT: Thank you, Mr. Naimi. Michancy?

15 MS. CRAMER: Thank you, Your Honor. And one of the
16 things that -- the Plaintiff has a selective memory, but one
17 of the issues that they brought up even previously when they
18 argued that the time share meant that she had primary under
19 Rivero (ph), Judge Gentile actually pointed to the Bluestein
20 case, and said that we were not counting hours, and that based
21 on the days that they had, the time share, that it was joint,
22 and that she was not going to permit the Defendant to do hour
23 counting, but that she's taking a more expansive view,
24 pursuant to Bluestein. So now, with regard to their argument

1 on McMonigle, Your Honor, I have some concerns. Not only what
2 you've brought up, because you can see the time line here.

3 They filed the decree. The next day, they did the
4 notice of entry, and the next day they did a motion to modify.
5 And this case was filed in the spring of 2018. It was settled
6 in the spring of 2020, and then they immediately, the next
7 day, filed a motion to modify. And so this plaintiff -- this
8 Defendant has been litigating this case for three solid years.
9 She has been represented that entire time.

10 Furthermore, as Jason just pointed out, Your Honor,
11 excuse me, Mr. Naimi, back in 2019, Judge Gentile was already
12 addressing these allegations. So by the time that Dr. Paglini
13 had done the evaluation, and by the time that the judge had
14 already heard these allegations by the Plaintiff, the
15 Plaintiff, through her counsel, chose to settle this case.
16 She was represented by a very good attorney, Your Honor, and
17 she chose to settle this case, despite the fact that she
18 brought up all of these allegations previously.

19 And so Mr. Naimi's suggestion that we need to look
20 at the Castle case and at the Nance case is misplaced, because
21 in those cases, the Court never actually knew about the DV
22 allegations, and they were never brought up in the litigation.
23 In this case, the Plaintiff has absolutely brought it up in
24 numerous filings. She has brought this -- those allegations

1 up over and over and over again.

2 THE COURT: You mean the Defendant?

3 MS. CRAMER: They're --

4 THE COURT: You mean the Defendant has brought them
5 up over and over again?

6 MS. CRAMER: Yes. I apologize, Your Honor. Thank
7 you for correcting me. I mean the Defendant. She has brought
8 those allegations up time and time again, and that is what
9 distinguishes this case from the Castle matter and the Nance
10 matter is that in those cases, the Court wasn't aware of the
11 DV and -- or even the DV allegations. I would also point out
12 to the Court, Your Honor, that there is no evidence of
13 domestic violence in this case. She has never been able to
14 provide a single police report. My client has never been
15 arrested for domestic violence against Amanda Reed, ever. And
16 so there -- there is no -- there is no evidence to support
17 this.

18 And then the other issue I have, Your Honor, is that
19 in April of 2020, Ms. Reed filed her motion to modify, and it
20 was on a very narrow issue. And that was that she claimed
21 that Dr. Paglini's report substantiated her allegations of
22 domestic violence, and so that was grounds to modify custody.
23 However, Your Honor, in their pretrial memo that I received on
24 Friday, they -- it appears that they want to relitigate this

1 entire case. And they -- they are bringing up issues that
2 were never brought up in their filings, and that the Court did
3 not grant them leave to pursue in discovery.

4 They were not granted leave to pursue that in this
5 trial, and yet that now appears to be what they're doing in
6 the -- in their pretrial memo, which I just received Friday.
7 They've suddenly thrown everything plus the kitchen sink at
8 us. So that was not what Judge Gentile's order was. Her
9 order was based strictly on Dr. Paglini's report, and
10 discovery was only open pursuant to the -- the DV allegations.
11 That was it.

12 And so I would suggest that Your Honor is on point
13 that we don't overcome McMonigle here. We don't even get past
14 Rooney, because there is no change in circumstances here.
15 Nothing has taken place with -- between these two parties
16 since the decree was entered. So McMonigle, we -- precludes
17 it. And also, Your Honor, I would argue that we need an order
18 restricting the Defendant's case here, because it appears that
19 she wants to relitigate her entire case, rather than what was
20 ordered in April of -- or May of 2020 by Judge Gentile.

21 THE COURT: Mr. Naimi?

22 MR. NAIMI: Yes, Your Honor. Well, a couple -- I'll
23 make a couple of brief points, if I may. First and foremost,
24 Ms. Cramer is absolutely incorrect when she says that in the

1 Nance case, the Court was not -- was not -- not aware of the
2 DV. That is not true. In fact, motions in limine were filed
3 because the Defendant in that case didn't hire just one, but
4 two custody evaluation experts where DV was found to be true,
5 and subsequently filed motions in limine to preclude the
6 evidence from being admitted at the time of trial. So it was
7 heard.

8 The Court was aware of it. And then when I tried to
9 raise it at trial nonetheless, the Court refused to hear it at
10 that point. And so to say that the Court wasn't aware is
11 actually disingenuous. In fact, the Court was aware. They
12 just wouldn't consider it. And so when it went up on appeal,
13 the Supreme Court required them to listen to it because it had
14 never been adjudicated, just like it has never been
15 adjudicated in this court. Okay?

16 Secondly, the order from the May hearing, after
17 Judge Gentile heard the information from -- from Dr. Paglini's
18 report, she says, and this is on page 2 of her order, which
19 was entered in court on August 19th of '20, from the May 13th
20 hearing. It says, the Court finds that Dr. Paglini's concerns
21 are echoed by this Court. While Plaintiff Dad may have some
22 defenses to his behavior at times, and may be goaded by the
23 behavior of Defendant Mom and her father, they -- she thinks
24 it a -- and thinks it's inappropriate to intimidate or scare

1 them, including (indiscernible) the Court finds that this is
2 unacceptable. The point being is, the Court has concerns
3 about Father's behavior.

4 Now, that said, if we were to proceed today with an
5 evidentiary hearing, you would see that the crux of this case
6 does not lie solely on whether or not Plaintiff Father has
7 committed domestic violence. There are many issues that will
8 be laid before the Court today that even since that May order.
9 The children are not cared for properly while under Dad's
10 care. They're arriving at school on Mondays with improper
11 clothing, not well groomed.

12 In fact, if -- if you were to hear the evidence
13 today, you would find out that last Monday, Abigail showed up
14 at -- at school with -- this Monday, excuse me, at school with
15 -- with her hair completely messy, and gum in it. I mean,
16 these are the kinds of things that Dr. Paglini has concerns
17 about, and this is why modification of custody's appropriate.

18 Now, that said, Ms. Cramer inappropriately set forth
19 the standard in modification when she said substantial change.
20 There is no such thing when the parties have joint physical
21 custody in a prior order. The standard is best interests of
22 the children. And therefore, if we were to move forward
23 today, Your Honor would have to consider whether it is in the
24 best interests of Abigail and Shawn to reside primarily and be

1 under the care -- custodial care of their mom primarily, based
2 on best interests factors. Thank you, Your Honor.

3 THE COURT: Thank you, mister --

4 MS. CRAMER: Your Honor, if I can address that?
5 First of all, there is no school, so she didn't show up to
6 school Monday with gum in her hair. She's a normal child, and
7 she fell asleep and got gum in her hair, and Dad didn't see it
8 right away. It's not that the children are being neglected.
9 A kid getting gum in their hair is not neglect. But this goes
10 -- and also, Your Honor, with regard to the no substantial
11 change in Truax, Rooney's standard is (indiscernible) no
12 substantial change, and there hasn't.

13 And this -- this suggestion that the kids are not
14 being taken care of, Your Honor, goes to the point I was
15 making. We've never gotten any filings that actually suggest
16 that. All we have is their motion from April of 2020, two
17 days after the divorce decree was signed, in which she claims
18 that there has been domestic violence and that's grounds to
19 change custody two days after she settled the matter. Okay?

20 So there has been no notice provided to my client
21 that they were going to litigate anything else today. No
22 notice whatsoever. So saying that they're now going to
23 litigate child neglect, we're going to litigate Abby having
24 gum in her hair one day, we're going to litigate whatever else

1 they want to throw at us in their pretrial memo five days
2 before trial. My client has never had any notice of that,
3 Your Honor. None whatsoever.

4 THE COURT: Okay. So thank you, Ms. Cramer. This
5 is -- I'm going to go off the record. I would like to review
6 Nance, because I'm not -- I'm not persuaded about the Castle
7 case, because the Castle case talked about, as -- as
8 Ms. Cramer stated, that -- the Castle case over -- in my
9 opinion, it overruled McMonigle to the extent that we couldn't
10 consider prior domestic violence that hadn't been adjudicated.

11 In -- in -- in this case, the Reed case, the
12 domestic violence in essence was adjudicated by the entry of
13 the decree in April of 2020. Mom had all of the knowledge of
14 all of the domestic violence that had occurred prior to April
15 of 2020, when she entered -- when she agreed to enter into
16 that decree. Also, she had the benefit of Dr. Paglini's
17 report. He -- his report was authored in January of 2020. So
18 the Court is not persuaded that -- that that should be a basis
19 for --

20 MS. CRAMER: Your Honor --

21 MR. NAIMI: May I respond to that, Your Honor?

22 MS. CRAMER: Can I just throw in one thing, Your
23 Honor? We do --

24 MR. NAIMI: (Indiscernible) --

1 THE COURT: Wait --
2 MS. CRAMER: -- we do --
3 THE COURT: Stand by. Stand by. Ms. Cramer?
4 MR. NAIMI: (Indiscernible) --
5 THE COURT: Ms. Cramer, stand -- wait -- whoa.
6 Whoa. Stand by. Only -- if -- if you want me to rule in your
7 favor, I have to be able to hear you. So we're going to do
8 one at a time. Ms. Cramer, stand by, I'm going to allow
9 Mr. Naimi to speak, and then I'll allow you to respond.
10 Mr. Naimi?
11 MR. NAIMI: Yeah. Two comments. Custody was
12 resolved in '18 on the case, despite the fact that the decree
13 wasn't entered until April of '20. Secondly, Rooney, we're
14 already past Rooney. Because the Court has already set it for
15 an evidentiary hearing. If the Rooney standard applied, the
16 -- the motion would have been denied back on May 13, '20. So
17 Rooney doesn't apply. We're past that. That's all.
18 THE COURT: Thank you, Mr. Naimi. Ms. Cramer?
19 MS. CRAMER: Your Honor, I just wanted to reiterate
20 to the Court that we heavily contest the allegations of DV,
21 and we do not acknowledge that there has been DV. My client
22 absolutely denies that allegation.
23 THE COURT: Okay. Thank you.
24 MS. CRAMER: So I don't want -- I don't want us to

1 proceed with assuming that this happened, because it's never
2 been proven. And so it -- it's -- he's never been arrested,
3 there -- he has no -- no history of any DV against Amanda
4 whatsoever. It is strictly her allegations. That is all.

5 THE COURT: Okay. Thank you for that. Okay. So
6 I'm going to review a few things, since sadly, I am new to
7 this case, and you got the switch in, I don't know, whatever
8 you call it. But you got a different judge that hasn't been
9 on the case previously, so I'm unfamiliar with it. At -- more
10 unfamiliar with it, obviously, than she was.

11 So let me take a look at a few things. We're going
12 to go off the record. It might be a bit, because there's
13 several things that have popped into my head that I want to
14 check on. I did prepare for this case. I've read quite a bit
15 of it, and reviewed the history. But I want to take a little
16 bit more time, because this is a big deal, and I don't want to
17 get it wrong.

18 So we're going to go off the record. If you feel
19 like you can utilize this time to discuss settlement, I
20 encourage that, because I'm -- I -- you already know I'm fast
21 leaning in precluding all evidence prior to entry of the
22 decree. I'm leaning that way, and you know that. So I'm
23 going to look at Nance, and unless Nance changes my mind, and
24 a review of a few other things, then you know which way I'm

1 going.

2 Also, if you've not had an opportunity to stipulate
3 to the admission of exhibits, if you do decide to go forward,
4 please take this time to do that. And we will --

5 MR. NAIMI: We -- we have, Your Honor. We've
6 already (indiscernible) we'll put our stipulations on the
7 record --

8 THE COURT: Outstanding. Thank you.

9 MR. NAIMI: -- if you discern that it's appropriate
10 to proceed.

11 THE COURT: Thank you so much. All right. Thank
12 you. We're going to go off the record --

13 MR. NAIMI: Your Honor, if I may?

14 THE COURT: Yes.

15 MR. NAIMI: I'm sorry. Do you -- do you mind if I
16 just take my jacket off, since we're in our conference room?

17 THE COURT: I'm so offended by even -- of course.
18 Of course. Go ahead. Take it off.

19 MR. NAIMI: Okay. Thank you, Your Honor. Much
20 appreciated.

21 MS. PRIMAS: (Indiscernible) offended too.

22 THE COURT: Oh, my goodness. Miss -- yeah, yeah,
23 get comfortable. My goodness. Thank you. Okay. Yeah.
24 We're going to go off the record, and somehow we will contact

1 you when we're ready to go back on. Thank you.

2 (COURT RECESSED AT 9:28:56 AND RESUMED AT 10:24:51)

3 THE COURT: Okay. We're back on the record in the
4 matter of Reed versus Reed, case number D-18-568055-D. And
5 the Court will note the presence of all of the same parties.
6 Is there anything that you have to tell me, or you're just
7 waiting for my decision?

8 MR. NAIMI: Waiting for your decision, Your Honor.

9 THE COURT: Okay. Thank you. Okay. So I did
10 review several things in the -- during our time in recess.
11 Specifically, I reviewed the Nance v. Ferraro case that was
12 referenced by Counsel previously. Let me see. That reference
13 is 134 Nev. 152, 418 P.3d 679. That's a 2018 decision.

14 In the Nance case -- well, before I -- before I even
15 go any further, these parties have joint physical custody
16 currently; is that right?

17 MS. CRAMER: Correct, Your Honor.

18 THE COURT: Okay.

19 MR. NAIMI: They're -- I don't know if I agree with
20 that, but there was a -- I will say that they agreed to joint
21 physical custody back in 2018, and that the Court modified
22 that schedule in May of '20.

23 MS. CRAMER: And that's a temporary order, pending
24 this hearing. So that's not --

1 MR. NAIMI: That's correct.

2 MS. CRAMER: -- a -- that's not a permanent change.

3 THE COURT: The -- let's see. At the -- the May 13,
4 2020, hearing and the May 26, 2020, minute order, which I
5 believe were included in the -- in the written order, yes.
6 That was entered August 19, 2020. The Court ordered on a
7 temporary basis that Mom will make the decisions pertaining to
8 medical, dental, psychological, educational, et cetera.
9 However, she is required to immediately provide Dad with all
10 of the information on those decisions. Dad is entitled to the
11 information, but that's the last -- that's the last labeling
12 of whether or not -- I mean the -- the -- as far as I'm aware,
13 the parties have joint legal custody and joint physical
14 custody pursuant to the decree that was entered --

15 MS. CRAMER: Yes, Your Honor.

16 THE COURT: And you disagree with that, Mr. Naimi?

17 MR. NAIMI: That -- pursuant to the decree, that is
18 correct, Your Honor. Pursuant to the May order, the
19 Defendant, my client, has pri -- sole legal custody and I
20 believe based on the schedule asserted by Judge Gentile in
21 May, that's primary custody to my client.

22 MS. CRAMER: But that was a temporary order, so it
23 --

24 MR. NAIMI: It -- it was a temporary order, yes.

1 MS. CRAMER: Okay.

2 THE COURT: Okay.

3 MS. CRAMER: So the controlling order here is the
4 decree.

5 THE COURT: Okay. Thank you. All right. So going
6 back to the Nance case, it says that read together, McMonigle
7 and Castle hold that a party seeking to modify primary
8 physical custody may not use evidence of domestic violence
9 known to the parties or the Court when the prior custody order
10 was entered to show a substantial change in circumstances
11 warranting modification. So on that -- indicates -- well, it
12 flat out says, seeking to modify primary physical custody.

13 In this case, Mom is seeking to modify joint
14 physical custody, but the Nance decision does address that.
15 And it says that the threshold issue for this Court is whether
16 McMonigle and Castle also prevent parties from relying on
17 previously known domestic violence evidence to demonstrate
18 modification is not in the child's best interests.

19 It goes on to state that, we conclude McMonigle and
20 Castle do not bar the district court from reviewing the facts
21 in evidence underpinning its prior rulings or custody
22 determinations in deciding whether the modification of a prior
23 custody order is in the child's best interest. These
24 decisions, likewise, do not prohibit parties from presenting

1 previously known domestic violence evidence defensively to
2 show modification is not in the child's best interest.

3 So the Court is concluding that the Court can
4 consider evidence of prior domestic violence in determining
5 whether to modify custody is in the best interest of the
6 child, which is the standard in this case under Truax v.
7 Truax. However, when you continue to read the Nance case
8 later on, on -- at 134 Nev. 156, it states that the Court held
9 that events that took place before the last custody order was
10 entered -- no, no, no, strike that. Okay.

11 On page 156 of the Nevada Reporter, it states,
12 ultimately, the Court concluded in Castle that although the
13 domestic violence doctrine -- excuse me -- although the
14 domestic violence occurred prior to the parties' divorce, the
15 res judicata doctrine should not be used to preclude parties
16 from introducing evidence of domestic violence that was
17 unknown to a party, or to the Court when the prior custody
18 determination was made.

19 And on page 157 of the Nevada Reporter, it says that
20 -- says that the Court further noted that the doctrine of res
21 judicata would still prevent parties from relitigating
22 isolated instances of domestic violence that the Court has
23 previously examined. So as recognized by the Castle Court,
24 the substantial change in circumstances requirement is itself