

1 **NOAS**
2 **Bruce I. Shapiro, Esq.**
Nevada Bar No. 004050
3 **Jack W. Fleeman, Esq.**
Nevada Bar No. 010584
4 **PECOS LAW GROUP**
8925 South Pecos Road, Suite 14A
5 Henderson, Nevada 89074
6 Telephone: (702) 388-1851
Facsimile: (702) 388-7406
7 Email: Bruce@pecoslawgroup.com
8 Jack@pecoslawgroup.com
Attorneys for Plaintiff

Electronically Filed
Aug 20 2021 01:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

9
10 **DISTRICT COURT**
11 **FAMILY DIVISION**
12 **CLARK COUNTY, NEVADA**

12 **Desmon Brandes,**

13 Plaintiff,

14 vs.

15 **Lacey Pictum n/ka**
16 **Lacey Krynzel,**

17 Defendant.

Case No. **D-10-440022-C**
Dept. No. **E**

18
19 **NOTICE OF APPEAL**

20 Notice is hereby given that **Desmon Brandes**, Plaintiff above named,
21 hereby appeals to the Supreme Court of the State of Nevada from the "Findings of
22

23 . . .

24 . . .

25 . . .

1 Fact, Conclusion of Law and Order” entered in this action on the 7th day of June
2 2021.

3 DATED this 17th day of August 2021

4 PECOS LAW GROUP

5
6 */s/ Jack Fleeman*

7 **Bruce I. Shapiro, Esq.**

8 Nevada Bar No. 004050

9 **Jack W. Fleeman, Esq.**

10 Nevada Bar No. 010584

11 8925 South Pecos Rd., Suite 14A

12 Henderson, Nevada 89074

13 (702) 388-1851

14 Attorney for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that on this 16th day of August
3 2021, the Notice of Appeal, in the above-captioned case was served as follows:

- 4 [] pursuant to NEFCR 9, by mandatory electronic service through the
5 Eighth Judicial District Court's electronic filing system;
- 6 [x] pursuant to NRCP 5, by placing the same to be deposited for mailing
7 in the United States Mail, in a sealed envelope upon which first class
8 postage was prepaid in Henderson, Nevada;
- 9 [] pursuant to EDCR 7.26 to be sent via facsimile and/or email, by duly
10 executed consent for service by electronic means;
- 11 [] by hand-delivery with signed Receipt of Copy.

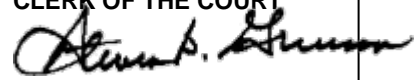
12 To individual(s) listed below at the address:

13 **Lacey Krynzel**
14 6530 Annie Oakley #814
15 Henderson, Nevada 89014

16 DATED this 17th day of August 2021.

17 */s/ Janine Shapiro*

18 _____
19 Janine Shapiro
20 An employee of PECOS LAW GROUP
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1 **ASTA**
2 **Bruce I. Shapiro, Esq.**
Nevada Bar No. 004050
3 **Jack W. Fleeman, Esq.**
Nevada Bar No. 010584
4 **PECOS LAW GROUP**
8925 South Pecos Road, Suite 14A
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7 Email: Bruce@pecoslawgroup.com
8 Jack@pecoslawgroup.com
Attorneys for Plaintiff/Appellant

9
10 **DISTRICT COURT**
11 **FAMILY DIVISION**
CLARK COUNTY, NEVADA

12 **Desmon Brandes,**

13 Plaintiff,

14 vs.

15 **Lacey Pictum n/ka**
16 **Lacey Krynzel,**

17 Defendant.

Case No. **D-10-440022-C**
Dept. No. **E**

18
19 **CASE APPEAL STATEMENT**

20 COMES NOW Plaintiff **Desmon Brandes**, by and through his attorneys,
21 **Bruce I. Shapiro, Esq.** and **Jack W. Fleeman, Esq.**, of the law firm of PECOS
22 LAW GROUP, and pursuant to NRAP 3(a)(1), respectfully presents his Case Appeal
23 Statement.
24
25
26

1 1. Desmon Brandes, Plaintiff above-named, is the Appellant filing this case
2 appeal statement.

3 2. The Honorable Charles J. Hoskin, Eighth Judicial District Court, Family
4 Division, is the district court judge who issued the decision wherefrom this appeal
5 arises.

6 3. The parties who were involved in the district court proceedings
7 wherefrom this appeal arises are as follows:
8

- 9 a. Desmon Brandes (“Desmon”), Plaintiff; and
10 b. Lacey Pictum, n/k/a Lacey Krynzel (“Lacey”), Defendant.

11 4. The parties involved in this appeal are:

- 12 a. Desmon Brandes, Appellant; and
13 b. Lacey Pictum, n/k/a Lacey Krynzel, Respondent.

14 5. The counsel involved in this appeal, so far as they are known at this
15 time, are:

- 16 a. **Bruce I. Shapiro, Esq.**
17 Nevada Bar No. 004050
18 PECOS LAW GROUP
19 8925 South Pecos Road, Suite 14A
20 Henderson, Nevada 89074
21 b. **Jack W. Fleeman, Esq.**
22 Nevada Bar No. 010584
23 PECOS LAW GROUP
24 8925 South Pecos Road, Suite 14A
25 Henderson, Nevada 89074
26 c. **Lacey Pictum, n/k/a Lacey Krynzel**
 6530 Annie Oakley #814
 Henderson, Nevada 89014

1 6. Appellant was represented by retained counsel in the district court
2 proceedings.

3 7. Appellant is being represented by retained counsel in this appeal.

4 8. Appellant was not granted leave to proceed *in forma pauperis*.

5
6 9. The above-entitled district court proceedings initially commenced with
7 the filing of a *Complaint to Establish Custody, Visitation and Child Support* on
8 December 29, 2010. A stipulation and order, resolving custody issues with an
9 award of primary physical custody to Lacey, was entered on July 3, 2011. Shortly
10 after the entry to the stipulation and order, Desmon began exercising *de facto*
11 primary physical custody. The *de facto* arrangement was agreed upon by the
12 parties.
13

14 On November 18, 2020, Desmon filed a motion to modify custody, which
15 noted the *de facto* arrangement. The district court held an evidentiary hearing on
16 Desmon's motion, and resolved all issues by way of a *Findings of Fact,*
17 *Conclusions of Law and Order*, filed on June 7, 2021.
18

19 On June 18, 2021, Desmon filed a motion to alter, amend, and clarify the
20 court's findings and judgment (tolling motion). On July 22, 2021, the court issued
21 its order denying Desmon's tolling motion. Desmon now appeals.
22

23 10. The nature of the action appealed from is the court's award of joint
24 physical custody to the parties, the custodial schedule set forth in the court's
25

1 decision, the court's determination of child support and child support arrears, and
2 the court's decision on the tax deduction related to the minor child.

3 11. This case has not been the subject of an appeal to or original writ
4 proceeding in the Supreme Court.
5

6 12. This appeal does involve child custody or visitation.

7 13. This case does involve the possibility of settlement.

8 DATED this 17th day of August 2021

9 PECOS LAW GROUP

10 /s/ Jack Fleeman

11 **Bruce I. Shapiro, Esq.**

12 Nevada Bar No. 004050

13 **Jack W. Fleeman, Esq.**

14 Nevada Bar No. 010584

15 8925 South Pecos Rd., Suite 14A

16 Henderson, Nevada 89074

17 (702) 388-1851

18 Attorneys for Plaintiff/Appellant
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Pursuant to NRCP 5(b), I hereby certify that on this 16th day of August
the Case Appeal Statement, in the above-captioned case was served as
vs:

- ☐ pursuant to NEFCR 9, by mandatory electronic service through the Eighth Judicial District Court's electronic filing system;
- ☒ pursuant to NRCp 5, by placing the same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada;
- ☐ pursuant to EDCR 7.26 to be sent via facsimile and/or email, by duly executed consent for service by electronic means;
- ☐ by hand-delivery with signed Receipt of Copy.

To individual(s) listed below at the address:

Lacey Krynzel
6530 Annie Oakley #814
Henderson, Nevada 89014

DATED this 17th day of August 2021.

/s/ *Janine Shapiro*

Janine Shapiro
An employee of PECOS LAW GROUP

CASE SUMMARY

CASE NO. D-10-440022-C

Desmon Brandes, Plaintiff.
vs.
Lacey Pictum, Defendant.

§
§
§
§

Location: **Department E**
 Judicial Officer: **Hoskin, Charles J.**
 Filed on: **12/30/2010**

CASE INFORMATION

Related Cases

R-20-215032-R (1J1F Related - Rule 5.103)

Case Type: **Child Custody Complaint**

Statistical Closures

07/22/2021 Settled/Withdrawn With Judicial Conference or Hearing
 06/07/2021 Disposed After Trial Start (Bench Trial)
 07/20/2011 Decision without Trial / Hearing

Case Status: **07/22/2021 Closed**

Case Flags: **Order After Hearing Required
 Order / Decree Logged Into
 Department
 Appealed to Supreme Court**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number D-10-440022-C
 Court Department E
 Date Assigned 01/11/2011
 Judicial Officer Hoskin, Charles J.

PARTY INFORMATION

Plaintiff

Brandes, Desmon
 6301 W Kraft AVE
 Las Vegas, NV 89130

Shapiro, Bruce I.
 Retained
 702-388-1851(W)

Defendant

Pictum, Lacey
 6530 Annie Oakley
 #814
 Henderson, NV 89014

Pro Se
 702-472-2955(H)

Subject Minor


Brandes, Paige
 6301 W Kraft AVE
 Las Vegas, NV 89130

DATE


EVENTS & ORDERS OF THE COURT

EVENTS


12/29/2010

 Complaint to Establish Custody, Visitation and Child Support
 Filed by: Counter Defendant Brandes, Desmon
 [2]


01/03/2011

 Motion
 Filed By: Counter Defendant Brandes, Desmon
 [3] Motion to Establish Joint Legal Custody; With Plaintiff having Primary Physical Custody of the Minor Child; Specified Visitation with Safeguards as set Forth Herein; Address Child Support; Fees and Costs, and Related Relief

01/05/2011

 Proof of Personal Service of Summons and Complaint
 Filed by: Counter Defendant Brandes, Desmon
 For: Counter Claimant Pictum, Lacey
 [4] Affidavit of Service

01/10/2011

 Answer and Counterclaim
 Filed By: Counter Claimant Pictum, Lacey

CASE SUMMARY

CASE NO. D-10-440022-C

[6] Answer to Complaint to Establish Custody and Counterclaim for Primary Physical Custody of the Parties' Minor Child and Child Support

01/10/2011



Peremptory Challenge

Filed By: Counter Claimant Pictum, Lacey

[7] Peremptory Challenge of Judge

01/10/2011



Financial Disclosure Form

Filed by: Counter Claimant Pictum, Lacey

[5] Financial Disclosure Form

01/13/2011



Notice of Department Reassignment

[8]

02/10/2011



Request for Child Protection Service Appearance and Records

Filed by: Counter Defendant Brandes, Desmon

[10] Request for Child Protection Service Appearance and Records

02/11/2011



Reply

Filed By: Counter Defendant Brandes, Desmon

[11] Reply to Counterclaim

02/11/2011



Certificate of Mailing

Filed By: Counter Defendant Brandes, Desmon

Party 2: Counter Claimant Pictum, Lacey

[9] Motion

02/14/2011



Opposition and Countermotion

Filed By: Counter Claimant Pictum, Lacey

[13] Opposition to Plaintiff's Motion to Establish Joint Legal Custody; With Plaintiff Having Primary Physical Custody of the Minor Child; Specified Visitation With Safeguards as Set Forth Herein; Address Child Support; Fees and Costs and Related Relief and Countermotion to Set Child Support and Other Related Relief

02/16/2011



Scheduling Order

Filed by: Counter Defendant Brandes, Desmon

[12] Evidentiary Hearing Scheduling Order

03/04/2011



Supplemental

Filed By: Counter Claimant Pictum, Lacey

[14] Supplemental Exhibit

03/09/2011



Financial Disclosure Form

Filed by: Counter Defendant Brandes, Desmon

[15] Financial Disclosure Form

03/10/2011



Certificate of Mailing

Filed By: Counter Defendant Brandes, Desmon

Party 2: Counter Claimant Pictum, Lacey

[16]

03/17/2011



Order

Filed By: Counter Claimant Pictum, Lacey

[17] Order From the February 16, 2011 Hearing

03/21/2011



Notice of Entry of Order

Filed By: Counter Claimant Pictum, Lacey

[18] Notice of Entry of Order

04/08/2011



Production of Documents

Filed by: Counter Claimant Pictum, Lacey

[19] Defendant's Initial Production of Documents and List of Witnesses Pursuant to NRCP 16.2

04/15/2011



















Supplement

Filed by: Counter Defendant Brandes, Desmon

[20] Defendant's First Supplemental Disclosure Pursuant to NRCP 16.2


















CASE SUMMARY

CASE NO. D-10-440022-C

04/20/2011	 Order Filed By: Counter Claimant Pictum, Lacey <i>[21] Order From The March 8, 2011 Hearing</i>
04/22/2011	 Notice of Entry of Order Filed By: Counter Claimant Pictum, Lacey <i>[22] Notice of Entry of Order</i>
06/17/2011	 Motion Filed By: Counter Defendant Brandes, Desmon <i>[23] Motion for Withdraw as Counsel for Plaintiff</i>
07/05/2011	 Stipulation and Order Filed By: Counter Claimant Pictum, Lacey <i>[24] Stipulation and Order</i>
07/06/2011	 Notice of Entry of Stipulation and Order Filed by: Counter Defendant Brandes, Desmon <i>[25] Notice of Entry of Stipulation and Order</i>
07/21/2011	 Order to Withdraw as Attorney of Record Filed by: Counter Defendant Brandes, Desmon <i>[26] Order to Withdraw as Attorney of Record</i>
07/28/2011	 Notice of Entry of Order Filed By: Counter Defendant Brandes, Desmon <i>[27] Notice of Entry of Order</i>
12/29/2011	 Notice of Withdrawal Filed by: Counter Claimant Pictum, Lacey <i>[28] Notice Of Withdrawal Of Attorney Of Record</i>
11/18/2020	 Motion Filed By: Counter Defendant Brandes, Desmon <i>[29] Motion to Modify Custody to Joint Physical Custody; to Set Child Support; for Finding of No Child Support Arrears; for Attorney's Fees; and for Related Relief</i>
11/18/2020	 Certificate of Service Filed by: Counter Defendant Brandes, Desmon <i>[30] Certificate of Service</i>
11/19/2020	 Notice of Hearing <i>[31] Notice of Hearing</i>
11/20/2020	 Certificate of Service Filed by: Counter Defendant Brandes, Desmon <i>[32] Certificate of Service</i>
12/07/2020	 Opposition to Motion Filed by: Counter Claimant Pictum, Lacey <i>[33] OPPOSITION TO MOTION TO MODIFY CUSTODY TO JOINT PHYSICAL CUSTODY; AND COUNTERMOTION TO HOLD PLAINTIFF IN CONTEMPT OF COURT; REFERRAL TO MEDIATION; FOR AWARD OF FEES AND COSTS; FOR SANCTIONS AND RELATED RELIEF</i>
12/08/2020	 Notice of Telephonic Hearing Filed by: Counter Claimant Pictum, Lacey <i>[34] NOTICE OF INTENT TO APPEAR BY COMMUNICATION EQUIPMENT</i>
12/08/2020	 Certificate of Service Filed by: Counter Claimant Pictum, Lacey <i>[35] Certificate of Service</i>
12/22/2020	 Notice Filed By: Counter Defendant Brandes, Desmon

CASE SUMMARY

CASE NO. D-10-440022-C

	<i>[36] Notice of Intent to File Reply to Opposition and Countermotion That Was Never Served</i>
01/11/2021	 Reply to Opposition Filed by: Counter Defendant Brandes, Desmon; Attorney Shapiro, Bruce I. <i>[37] Plaintiff's Reply in Support of Motion and Opposition to Countermotion</i>
01/11/2021	 Exhibits Filed By: Counter Defendant Brandes, Desmon <i>[38] Exhibit Addendum to "Reply in Support of Motion and Opposition to Countermotion"</i>
01/11/2021	 Financial Disclosure Form Filed by: Counter Defendant Brandes, Desmon <i>[39] General Financial Disclosure Form</i>
01/11/2021	 Ex Parte Application for Order Party: Counter Defendant Brandes, Desmon <i>[40] Ex Parte Application for Drug/Alcohol Screening of Defendant</i>
01/14/2021	 Exhibits Filed By: Counter Defendant Brandes, Desmon <i>[41] Supplemental Exhibit to "Reply in Support of Motion and Opposition to Countermotion"</i>
01/18/2021	 Supplemental Exhibits Filed By: Counter Defendant Brandes, Desmon <i>[42] Second Supplemental Exhibit to "Reply in Support of Motion and Opposition to Countermotion"</i>
01/19/2021	 Scheduling Order <i>[43] EVIDENTIARY HEARING MANAGEMENT ORDER</i>
02/02/2021	 Order <i>[44] 01.19.2021</i>
02/03/2021	 Notice of Entry of Order Filed By: Counter Defendant Brandes, Desmon <i>[45] Notice of Entry of Order From January 19, 2021 Hearing</i>
02/03/2021	 Notice of Entry of Order Filed By: Counter Defendant Brandes, Desmon <i>[46] Amended Notice of Entry of Order From January 19, 2021 Hearing</i>
04/19/2021	 Witness List Filed by: Counter Defendant Brandes, Desmon <i>[47] Plaintiff's Initial Witness List</i>
05/10/2021	 Financial Disclosure Form Filed by: Counter Claimant Pictum, Lacey <i>[48] General Financial Disclosure Form</i>
05/11/2021	 Pre-trial Memorandum Filed By: Counter Defendant Brandes, Desmon <i>[49] Plaintiff's Pre-Trial Memorandum</i>
05/20/2021	 Pre-trial Memorandum Filed By: Counter Claimant Pictum, Lacey <i>[50] Defendant's Pre-Trial Memorandum</i>
05/24/2021	 Financial Disclosure Form Filed by: Counter Claimant Pictum, Lacey <i>[51] General Financial Disclosure Form</i>
05/27/2021	 Subpoena Filed By: Counter Defendant Brandes, Desmon <i>[52] Trial Subpoena - Noah Van Rossum</i>
05/31/2021	 Trial Memorandum

CASE SUMMARY

CASE NO. D-10-440022-C

Filed by: Counter Defendant Brandes, Desmon

[53] Plaintiff's EDCR 7.27 Trial Memo

06/07/2021



Order

[54] Findings of Fact, Conclusions of Law and Order Resulting from June 1, 2021 Hearing

06/07/2021



Notice of Entry

[55] Notice of Entry of Findings of Fact, Conclusions of Law and Order resulting from June 1, 2021 Hearing

06/18/2021



Motion

Filed By: Counter Defendant Brandes, Desmon

[56] Motion to Alter, Amend, and Clarify Its Findings and Judgment

06/24/2021



Notice of Hearing

[57] Notice of hearing

07/19/2021



Opposition to Motion

Filed by: Counter Claimant Pictum, Lacey

[58] Opposition to Motion to Clarify

07/22/2021



Order

[59] ORDER FROM JULY 30, 2021 CHAMBER CALENDAR

08/02/2021



Notice of Entry

[60] Notice of Entry

08/17/2021



Notice of Appeal

Filed By: Counter Defendant Brandes, Desmon

[61] Notice of Appeal

08/17/2021



Case Appeal Statement

Filed By: Counter Defendant Brandes, Desmon

[62] Case Appeal Statement

HEARINGS

02/16/2011



Motion for Child Custody (9:00 AM) (Judicial Officer: Hoskin, Charles J.)

Events: 01/03/2011 Motion

Pltf's Motion For Custody, Specified Visitation With Safeguards As Set Forth Herein; Child Support; Fees And Costs (JEA Note: 16.2 eligible)

MINUTES

Peremptory Challenge Filed

Evidentiary Hearing; PLTF'S MOTION FOR CUSTODY, SPECIFIED VISITATION, CHILD SUPPORT, FEES

Journal Entry Details:

Brandon McCoy, Esq., #10402, appearing in an unbundled capacity for Plaintiff. Argument by counsel. COURT ADVISED, the Case Management Conference will be heard today and an evidentiary hearing will be set. The parties have agreed that Defendant was the primary physical custodian of the child for the first few years of his life. COURT ORDERED, Defendant referred to ATI for a drug test today. TEMPORARILY, Plaintiff awarded PRIMARY PHYSICAL CUSTODY. Defendant's TEMPORARY VISITATION will be Tuesday and Thursdays evenings from 5:00 PM until 8:00 PM with Maternal Grandparents supervising. Defendant will also have every other weekend beginning February 18, 2011 from Friday at 5:30 PM until Sunday at 8:00 PM. The evening time will be supervised by Maternal Grandparents with Defendant having unsupervised contact during the daytime. Receiving party will pick up for the exchanges, except for Tuesday and Thursdays, it will be Defendant's responsibility to transport. The child is to be returned to Plaintiff today at 8:00 PM. The request for child support and attorney's fees is DEFERRED. Mr. Kelleher is to prepare the order and Mr. McCoy is to sign off. 3/08/11 10:00 AM RETURN: DRUG TEST RESULTS 6/21/11 11:00 AM CALENDAR CALL 7/05/11 1:30 PM EVIDENTIARY HEARING - STACK #2 ; Evidentiary Hearing

03/08/2011



Return Hearing (10:00 AM) (Judicial Officer: Hoskin, Charles J.)

Drug Test Results

MINUTES

Matter Heard; RETURN: DRUG TEST RESULTS

CASE SUMMARY

CASE NO. D-10-440022-C

Journal Entry Details:

*Brandon McCoy, Esq., #10402, appearing on behalf of Plaintiff in an unbundled capacity. COURT NOTED, the drug test results were negative. Mr. Kelleher stated he sent Defendant for another drug test and those results were clean also. Argument by counsel regarding Defendant's request for enhanced visitation time. COURT ORDERED, pending the evidentiary hearing set for July 5, 2011, Plaintiff may call Mr. Kelleher's office four times for Defendant to undergo a random drug test. Defendant is to report for the drug test within one hour of the call to Mr. Kelleher's office. Defendant provided with two ATI referral forms in open Court. If more referral forms are necessary, they can be obtained from the Court. TEMPORARILY, parties awarded JOINT PHYSICAL CUSTODY with Defendant's TIMESHARE being from Sunday at 8:00 PM until Thursday at 5:00 PM and Plaintiff will have the child from Thursday at 5:00 PM until Sunday at 8:00 PM. The calendar call and evidentiary hearing dates STAND. Mr. Kelleher is to prepare the order and Mr. McCoy is to sign off. COURT directed Mr. Kelleher to submit the order from the February 16, 2011 hearing. ;
Matter Heard*

06/21/2011



Calendar Call (11:00 AM) (Judicial Officer: Hoskin, Charles J.)

Events: 02/16/2011 Scheduling Order

Off Calendar; CALENDAR CALL

Journal Entry Details:

This case was not called on the record. Mr. Kelleher appeared early for the calendar call and stated he believes the matter is settled and Plaintiff would not be appearing today. Further requested the trial date be vacated and a status check be set. At the direction of the Court, Clerk vacated the trial date and set a status check. 7/14/11 11:00 AM STATUS CHECK: RESOLUTION ;

Off Calendar

07/05/2011

CANCELED Evidentiary Hearing (1:30 PM) (Judicial Officer: Hoskin, Charles J.)

Vacated

Vacated 6/21/11. Status check set for 7/14/11

07/14/2011

CANCELED Status Check (11:00 AM) (Judicial Officer: Hoskin, Charles J.)

Vacated - Moot

Stipulation and Order submitted

07/20/2011



Motion for Withdrawal (10:00 AM) (Judicial Officer: Hoskin, Charles J.)

Events: 06/17/2011 Motion

Brandon W. McCoy's Motion to Withdraw as Counsel for Plaintiff

MINUTES

Granted;

Journal Entry Details:

BRANDON W. MCCOY'S MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF Brandon McCoy, Esq., #10402, appearing on behalf of his motion. There being appropriate service and no opposition, COURT ORDERED, motion GRANTED. Order signed in open Court. ;

Granted

01/19/2021



Motion (9:00 AM) (Judicial Officer: Hoskin, Charles J.)

Pltf's Motion to Modify Custody to Joint Physical Custody; To Set Child Support; For Finding of No Child Support Arrears; For Attorney's Fees; and for Related Relief

Matter Heard; See All Pending Entry 1/19/21

Matter Heard

01/19/2021

Opposition & Countermotion (9:00 AM) (Judicial Officer: Hoskin, Charles J.)

Pltf's Opposition to Motion to Modify Custody to Joint Physical Custody; and Countermotion to Hold Plaintiff in Contempt of Court; Referral to Mediation; For Award of Fees and Costs; For Sanctions and Related Relief

Matter Heard; See All Pending Entry 1/19/21

Matter Heard

01/19/2021

Hearing (9:00 AM) (Judicial Officer: Hoskin, Charles J.)

Plaintiff's Reply in Support of Motion and Opposition to Countermotion

Matter Heard; See All Pending Entry 1/19/21

Matter Heard

01/19/2021



All Pending Motions (9:00 AM) (Judicial Officer: Hoskin, Charles J.)

MINUTES

Matter Heard;

Journal Entry Details:

PLAINTIFF'S MOTION TO MODIFY CUSTODY TO JOINT PHYSICAL CUSTODY; TO SET CHILD


CASE SUMMARY


CASE NO. D-10-440022-C

SUPPORT; FOR FINDING OF NO CHILD SUPPORT ARREARS; FOR ATTORNEY'S FEES; AND FOR RELATED RELIEF...DEFENDANT'S OPPOSITION AND COUNTERMOTION TO HOLD PLAINTIFF IN CONTEMPT OF COURT; REFERRAL TO MEDIATION; FOR AWARD OF FEES AND COSTS; FOR SANCTIONS AND RELATED RELIEF...PLAINTIFF'S REPLY IN SUPPORT OF MOTION AND OPPOSITION TO COUNTERMOTION Court Clerks: Sheila Bourne, Blanca Madrigal (mb). In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the BlueJeans application. Arguments regarding modification of custody. Mr. Shapiro argued that Mom was terminated from her job due to drug use. That Child Protective Services were contacted, and the minor is safe with Dad. Mr. Shapiro requested a child interview and alleged Dad has been the primary caregiver for the past ten (10) years. Mom requested a continuance to obtain counsel. Mom alleged that custody had been 50% each since August. The Court read the text messages and had some concerns. **COURT ORDERED:** 1) Mom was referred to American Toxicology Institute (ATI) for a full drug screen. Mom must test today, 1/19/2021. A copy of the ATI Referral and Instructions emailed to Mom; 2) Pending the drug test result, the parties shall continue to exercise the following schedule: Week 1, Dad shall have the minor child Thursday through Sunday and Mom Monday through Wednesday. Week 2, Dad shall have the minor child Wednesday through Friday and Mom Saturday through Tuesday. If there is no issue with the drug test, the parties will continue to follow the schedule on a temporary basis; 3) On a temporary basis, the parties shall have JOINT PHYSICAL CUSTODY; 4) Mom shall file a Financial Disclosure Form before the Calendar Call date below; 5) Department E shall order the CPS records; 6) Plaintiff's request for a child interview is DEFERRED. If there are concerns with the drug test, the Court will refer the child to an interview; 7) The Court set the matter for an EVIDENTIARY HEARING to address custody and related issues on 6/01/2021 at 1:30 PM (Stack #2). The Case and Evidentiary Hearing Management Order was executed, FILED, and processed in Odyssey. A copy of the Order shall be emailed to counsel and Defendant; 8) CALENDAR CALL set for 5/18/2021 at 11:00 AM; 9) Mr. Shapiro shall prepare the Order. ; Matter Heard

05/18/2021 **Calendar Call** (11:00 AM) (Judicial Officer: Hoskin, Charles J.)
Calendar Call (Stack #2)
Evidentiary Hearing; See All Pending Entry 5/18/21
Evidentiary Hearing

05/18/2021 **Status Check** (11:00 AM) (Judicial Officer: Hoskin, Charles J.)
Defendant's Drug Test Results
Matter Heard; See All Pending Entry 5/18/21
Matter Heard

05/18/2021  **All Pending Motions** (11:00 AM) (Judicial Officer: Hoskin, Charles J.)
Matter Heard;
Journal Entry Details:
CALENDAR CALL...STATUS CHECK: DEFENDANT'S DRUG TEST RESULTS In the interest of public safety due to the Coronavirus pandemic, the matter was heard via VIDEO CONFERENCE through the BlueJeans application. Both Mr. Shapiro and the Defendant agreed to move forward with trial. **COURT ORDERED:** 1) Defendant to file her Pretrial Memorandum no later than close of business on 5/20/2021; 2) The Evidentiary Hearing scheduled on 6/01/2021 at 1:30 PM shall STAND and a FIRM DATE. Both counsel and Defendant stipulated to video appearances at trial.; Matter Heard

06/01/2021  **Evidentiary Hearing** (1:30 PM) (Judicial Officer: Hoskin, Charles J.)
Evidentiary Hearing Custody and Related Issues (FIRM SETTING - Video Appearances)

MINUTES

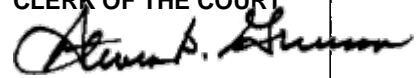
Decision Made;

Journal Entry Details:

EVIDENTIARY HEARING In the interest of public safety due to the Coronavirus pandemic, the matter was heard via VIDEO CONFERENCE through the BlueJeans application. Opening statements waived. Sworn testimony and Exhibits presented (see worksheets). Closing arguments by counsel. **COURT ORDERED** the matter taken UNDER ADVISEMENT; the Court will issue its written decision. CASE CLOSED upon entry of same. ;

Decision Made

07/30/2021 **CANCELED Motion** (3:00 AM) (Judicial Officer: Hoskin, Charles J.)
Vacated - per Order
Motion to Alter, Amend, and Clarify Its Findings and Judgment



ORDR

**DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA**

BRANDES, DESMON,
Plaintiff,

Case No.: D-10-440022-C

Dept.: E

v.

Date: June 1, 2021

Time: 1:30 p.m.

PICTUM, LACEY, nka KRUNZEL

Defendant.

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
ORDER**

This matter having come on for Evidentiary Hearing, via video, on the 1st day of June, 2021, for the Court to consider Plaintiff's request for modification of custody; Plaintiff, Desmond Brandes (Desmon) being present, and represented by Bruce Shaprio, Esq.; Defendant, Lacey Krunzel (Lacey) being present, and representing herself. The Court, having heard the evidence and arguments presented, taking the matter under advisement, finds and orders as follows.

☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Run
☐ Trial Disposition:
☐ Settled/Withdrawn:
☐ Without Judicial Conf/Hrg
☐ With Judicial Conf/Hrg
☐ By ADR
☐ Judgment Reached by Trial

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Statement of the Case

The parties' permanent custody arrangement is defined by their Stipulation and Order, filed July 5, 2011 (SAO). That SAO awards the parties joint legal custody and Lacey primary physical custody of their minor child: Page, born April 5, 2007 (child). Desmon's visitation schedule was "two (2) days on weekdays and every other weekend." Desmon's monthly child support obligation was established at \$400.00. As such, primary physical custody to Lacey is the controlling permanent custody order.

On November 18, 2020, Desmon filed his *Motion to Modify Custody to Joint Physical Custody; to Set Child Support; for Finding of No Child Support Arrears; For Attorney's Fees; and for Related Relief*. On December 7, 2020, Lacey filed her *Opposition and Countermotion to Hold Plaintiff in Contempt of Court; Referral to Mediation; for Award of Fees and Costs; for Sanctions and Related Relief*.

On November 23, 2020, in the child support case, R-20-215032-R, Desmon's child support obligation was modified to \$1,040.00 per month, effective August 2020. That Recommendation and Order was entered on December 16, 2020. The Order is unclear, however, concerning whether the child support court assessed arrears. An arrears payment is established, but no arrears are listed.

1 At the January 19, 2021 hearing, Lacey was referred for drug testing
2
3 and a temporary joint physical custody and visitation schedule was
4 implemented. On week one, Desmon was to have the care of the child
5 Thursday through Sunday; on week two Desmon was to have the care of the
6 child Wednesday through Friday. An Evidentiary Hearing was set on
7 Desmon's request to modify physical custody. The drug test results
8 demonstrated a very low level of THC in Lacey's urine.
9
10

11 At the May 18, 2021 Calendar Call, the Evidentiary Hearing was set
12 firm.
13

14 **Findings of Fact**

15 That this Court has personal and subject matter jurisdiction in this
16 case.
17

18 That Desmon testified in his case-in-chief. He has worked for NV
19 Energy for 23 years. He has another child, Jayden, who is 16 years old
20 whom he shares joint physical custody with that child's mother.
21

22 That, as of January 2021, the child has resided primarily with him.
23 The child came to him with a video of Lacey, which concerned her, and has
24 since been in his primary care. The child has seen Lacey a handful of times
25 since January 2020 and at the child's softball tournaments. Between January
26 2021 and the Trial, Lacey has exercised one overnight visit with the child.
27
28

1 That Desmon indicated that, following the July 2011 SAO, the parties
2 exercised joint physical custody. That situation stopped in late 2011 or early
3 2012. Desmon indicated that, with Lacey's agreement, the child then began
4 living full time with him.
5

6
7 That, when Lacey went into rehab in California, the child would
8 contact her by telephone. After Lacey's return from rehab, the child visited
9 her on weekends and during the summers. Lacey was living with her
10 parents at that point.
11

12 That Desmon indicated that the child has always attended school in
13 the zone determined from his home. During the summers the child would
14 spend every other weekend with Desmon. Between 2012 and 2016,
15 following Lacey's return from rehab, prior to exercising visits with the child,
16 Lacey would take an at-home drug test. If it was not clean, Lacey would not
17 get visitation.
18
19

20 That Lacey moved out of her parent's home in 2016. The prior
21 schedule of every-other weekend and summers with Lacey continued.
22

23 That, in March 2020, when schools closed due to Covid, Desmon
24 decided to "start the summer early" and permit the child to start the schedule
25 with Lacey, typically reserved for summer break. Desmon was then
26 exercising every other weekend through August 2020. The child then
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1 followed the same schedule as Desmon's other child, visiting three days one
2 week and four days the next week.
3

4 That Desmon testified that, for the majority of the last ten years, he
5 has been the *de facto* primary physical custodian. He did not return to court
6 to confirm that because he did not see a reason to do so. Desmon told Lacey
7 that she did not need to pay him child support.
8

9 That Exhibit 3 is a video, taken by the child of Lacey, where Lacey
10 appears to be impaired. Exhibit 1 is a text exchange between the child and
11 Desmon's other child regarding the child's concerns relating to Lacey being
12 impaired. Exhibit 4 is a text exchange between Lacey and the child
13 regarding the child's concerns about Lacey's drug use and desire to remain
14 with Desmon until Lacey gets "better."
15

16 That Desmon paid his child support obligation from the July 2011
17 SAO until mid-2012. He had *de facto* primary custody at that time and
18 Lacey agreed to the support arrangement.
19

20 That, on cross-examination, Desmon agreed that, following Lacey's
21 return from rehab, her supervised visitation went to every other weekend
22 within a few months. Desmon agreed to Lacey seeing the child with her
23 parent's supervision without a court order. Lacey's weekend visits were
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1 from Friday, after school, until Monday at school. That schedule continued
2 until March 2020.
3

4 That Desmon confirmed that he has not seen Lacey on drugs since
5 2015.
6

7 That Lacey testified in Desmon's case-in-chief and then in her case-
8 in-chief. She was in in-patient rehab, in California, for 45 days. After that,
9 she always had the child during the summers in addition to the weekends.
10

11 That Lacey confirmed that, since 2011, she has not exercised primary
12 physical custody. She indicated that she is fighting to get custody back.
13 Between March 2020 and December 2020, Lacey stated that the parties had
14 "50/50" custody.
15

16 That, in January 2021, Lacey agreed that the child could remain
17 primarily with Desmon. She believed that, following the drug test, the child
18 would come back. While Lacey understands the child's concerns, she
19 believes that the child is being kept from her.
20

21 That Lacey discussed her prior employment and that she was found
22 unresponsive at her desk on two occasions. She was let go from that
23 employment for excessive absences.
24

25 That Lacey discussed her health issues. Her doctor recommended that
26 she have her appendix removed, but she refused. Lacey confirmed that she
27
28

1 refused to sign the HIPPA release and permit Desmon to review her medical
2 records. Lacey has been taking Soboxon since 2015. She does not believe it
3 is an opioid.
4

5 That Lacey agreed that Desmon could claim the child on his taxes
6 until she was better. Desmon stopped paying her child support when she
7 went to rehab. She agreed that he did not need to pay her further child
8 support until she got better. She now states that she is only asking for child
9 support from 2015 forward. Lacey admitted to not pursuing child support,
10 but she wants it now.
11
12

13 That, when the child support case was opened by the State, Lacey did
14 not tell the District Attorney, Family Support about the parties agreement
15 concerning child support.
16

17 That Lacey last worked in 2018 and earned \$15.00 per hour. Since
18 then, she has only worked in her husband's business. She is receiving
19 unemployment benefits of \$527.00 per week.
20

21 That, on cross-examination, Lacey again confirmed that, following
22 rehab, she left the child primarily with Desmon. Notwithstanding the agreed
23 *de facto* arrangement, she wants child support arrears from August 2015
24 until the present.
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That Lacey went through the historical custodial arrangements. Until 2013/2014, Lacey stated she had 35% of the time with the child because of school. She did not object to every-other weekend contact. Lacey never requested to modify the arrangement or child support. She did not come after Desmon for support because he was the one caring for the child.

That Lacey has been making payments for the child's softball participation.

That Desmon's January 11, 2021 Financial Disclosure Form (FDF) represents a gross monthly income (GMI) of \$8,345.00. Lacey's May 10, 2021 FDF indicates a GMI of \$2,283.00 from unemployment.

Conclusions of Law

The controlling custody order is joint legal and primary physical custody to Lacey. Shortly after that SAO was entered, the parties agreed to Desmon acting as *de facto* primary custodian.

Although this Court entered a temporary joint physical custody order at the January 19, 2021 hearing, the parties have not followed that order either.

In this case, Desmon's Motion requested joint physical custody of the child. However, he argued for primary physical custody at the Trial. Lacey

1 is requesting to maintain the primary physical custody SAO, which she
2
3 admits the parties have not followed for almost a decade.

4 Regarding modifying physical custody, NRS 125C.0045 states:

5
6 “1. In any action for determining the custody of a minor child, the
7 court may, except as otherwise provided in this section and NRS
8 125C.0601 to 125C.0693, inclusive, and chapter 130 of NRS:

9 (a) During the pendency of the action, at the final hearing or at
10 any time thereafter during the minority of the child, make such
11 an order for the custody, care, education, maintenance and
12 support of the minor child as appears in his or her best interest;
13 and

14 (b) At any time modify or vacate its order, even if custody was
15 determined pursuant to an action for divorce and the divorce
16 was obtained by default without an appearance in the action by
17 one of the parties.

18 The party seeking such an order shall submit to the jurisdiction of the
19 court for the purposes of this subsection. The court may make such an
20 order upon the application of one of the parties or the legal guardian
21 of the minor.

22 2. Any order for joint custody may be modified or terminated by the
23 court upon the petition of one or both parents or on the court's own
24 motion if it is shown that the best interest of the child requires the
25 modification or termination. The court shall state in its decision the
26 reasons for the order of modification or termination if either parent
27 opposes it.”

28 In determining whether to modify a primary physical custodial order,
the movant must establish that there has been a substantial change of
circumstances, affecting the child, since the most recent custody order and

1 that the child's best interests would be served by the change. *Ellis v.*
2 *Carucci*, 123 Nev. 145, 147, 161 P.3d 239, 240 (2007). In determining
3 whether to modify a joint physical custodial order, the movant must
4 establish that the change would serve the child's best interests. *Truax v.*
5 *Truax*, 110 Nev. 437, 439, 874 P.2d 10, 11 (1994).
6
7

8 It is undisputed that Desmon maintained *de facto* primary custody for
9 the majority of the last ten years. It is also undisputed that, between March
10 2020 and August 2020, the child resided primarily with Lacey on an
11 extended "summer schedule." As the parties have essentially never followed
12 the SAO, it is necessary that this Court entertain a *Rivero* look back.
13
14

15 The Nevada Supreme Court gave direction when calculating the
16 timeshare exercised by the parties.
17

18 "The district court should calculate the time during which a party has
19 physical custody of a child over one calendar year. Each parent must
20 have physical custody of the child at least 40 percent of the time,
21 which is 146 days per year. Calculating the timeshare over a one-year
22 period allows the court to consider weekly arrangements as well as
23 any deviations from those arrangements such as emergencies,
24 holidays, and summer vacation. In calculating the time during which a
25 party has physical custody of the child, the district court should look
26 at the number of days during which a party provided supervision of
27 the child, the child resided with the party, and during which the party
28 made the day-to-day decisions regarding the child. . . .

Therefore, absent evidence that joint physical custody is not in the
best interest of the child, if each parent has physical custody of the

1 child at least 40 percent of the time, then the arrangement is one of
2 joint physical custody.”

3
4 *Rivero v. Rivero*, 125 Nev. 410, 427, 216 P.3d 213, 225 (2009). The *Rivero*
5 court goes on to conclude that the “district court must apply Nevada's
6 physical custody definition—not the parties' definition.” *Id.* at 429.

7
8 All evidence establishes that the custody arrangement which existed
9 between 2012 and 2020 would be defined as primary physical custody to
10 Desmon; Lacey maintained primary physical custody between March 2020
11 and August 2020; the parties maintained joint physical custody between
12 August 2020 and December 2020, which was also temporarily ordered at the
13 January 2021 hearing; and primary physical custody was exercised by
14 Desmon between January 2021 through the June 1, 2020 Evidentiary
15 Hearing.
16
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19 The law in this State is unclear on how to appropriately address a
20 request for modification of physical custody when a controlling order is
21 primary physical custody to one party, and the actions of the parties for a
22 decade, has been primary physical custody to the other party, who is the
23 non-custodial parent in the controlling order. The law is also unclear on
24 how to analyze a situation where, over the last 15 month, a *de facto* primary
25 custody arrangement to one party existed for five months, a *de facto* primary
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1 custody arrangement to the other party for five months and a *de facto* joint
2 physical custody for has been exercised for five months. Since it can be
3 reasonably argued that either *Ellis* or *Truax* could control depending whether
4 the *de facto* situation or permanent order is controlling, and that a best
5 interest analysis is contained in both approaches, this Court will analyze the
6 evidence presented under both scenarios prior to resolving the custody
7 modification issue.

8
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11 Since Lacey went to California to deal with her addiction issues,
12 Desmon has acted as primary physical custodian. This Court appreciates
13 Lacey's understanding, over the last decade, that maintaining the controlling
14 order would not have been in the best interests of the child. Such indicates a
15 desire to serve the child's best interests. Similarly, this Court appreciates
16 Desmon's willingness to step in and primarily care for the child while Lacey
17 worked through her issues.

18
19
20 The parties worked together and cooperated in an effort to serve the
21 best interests of the child during Lacey's issues. The best interests of child
22 are served by parents who are able to work through situations and agree to
23 co-parent with the child's best interest as their focus. Such is what occurred
24 since shortly following the SAO. This Court will not punish a parent for
25 looking out for the best interests of the child.

1 The “*Rivero* look back” through 2012 results in a determination that
2
3 Desmon is the *de facto* primary physical custodian. *See Rivero* at 427.
4 However, over the last 15 months, Desmon has been the primary physical
5 custodian for five months; Lacey has been the primary physical custodian
6 for five months; and the parties shared joint physical custody for five
7 months. While *Rivero* defines what constitutes primary physical custody
8 and that a year is a reasonable amount of time to assess the schedule, it does
9 not indicate that demonstration of the same automatically results in a
10 substantial change of circumstance finding.
11

12
13 Desmon bore the burden of establishing the factors necessary to
14 modify custody. Parents cooperating to serve the best interests of the child
15 while one parents struggles with an addiction is what is best for child.
16 However, the ongoing and continuing maintaining of *de facto* primary
17 custody to the “non-custodial” parent for such a substantial period satisfies a
18 substantial change of circumstances affecting the child. Thus, Desmon
19 meets the first prong under *Ellis*.
20
21
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23 The Court will also look to whether a modification would be in the
24 child’s best interests pursuant to both *Ellis* and *Truax*.
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1 In analyzing the best interest of the child, the court must analyze the
2 factors enumerated in NRS 125C.0035(4). Those factors are reviewed
3 below:
4

5 *The wishes of the child if the child is of sufficient age and*
6 *capacity to form an intelligent preference as to his or her physical*
7 *custody.* The child is 14 years old and of sufficient age and capacity
8 to form an intelligent preference. Evidence indicates that the child
9 expressed a desire to reside with Desmon until Lacey got better.
10 Given the drug test results from January 2021, it appears that drug use
11 is not a current concern. Lacey indicates that she understands the
12 child's concern. This factor favors Desmon.
13

14 *Any nomination of a guardian for the child by a parent.* No
15 nomination occurred in this case.
16

17 *Which parent is more likely to allow the child to have frequent*
18 *associations and a continuing relationship with the noncustodial*
19 *parent.* The parties worked together when Lacey went into rehab and
20 Lacey agreed to Desmon exercising primary care of the child.
21 Desmon has worked with Lacey and permitted her to maintain
22 reasonable contact following her rehab. This factor is neutral.
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1 *The level of conflict between the parents.* Minimal evidence
2
3 concerning this factor was presented. The parties have shared
4 information and been able to exchange the child throughout. They
5 have agreed upon specific duties relating to the child notwithstanding
6 minimal communication between the parties. Conflict is low. The
7 factor is neutral.
8

9 *The ability of the parents to cooperate to meet the needs of the*
10 *child.* Prior to the current litigation, the parties were able to cooperate
11 to meet the needs of the child. They were model parents in the area of
12 cooperation and permitting the other to spend time with the child.
13 Since July 2020, that circumstance has changed as a result of the
14 conflict concerning primary custody and, presumably, child support.
15 This factor is neutral.
16
17
18

19 *The mental and physical health of the parents.* Lacey has
20 demonstrated addiction issues. Such is the reason the parties changed
21 custody in 2012 and the reason the child chose to reside primarily
22 with Desmon earlier this year. No health issues relating to Desmon
23 were presented. This factor favors Desmon.
24
25

26 *The physical, developmental and emotional needs of the child.*
27 Desmon handles the physical needs of the child. For many years,
28

1 these parents have been able to work together to insure that the needs
2 of the child have been met. This factor is neutral.

3
4 *The nature of the relationship of the child with each parent.*

5 Neither party specifically discussed their relationship with the child.
6
7 Ultimately, this factor is neutral.

8 *The ability to maintain a relationship with a sibling.* Desmon

9 has another child whom he maintains joint physical custody. The
10 child has a good relationship with that sibling. Lacey did not
11 reference any siblings in her household, although the record indicates
12 other children in her home. This factor favors Desmon.
13
14

15 *Any history of parental abuse or neglect of the child or a*
16 *sibling of the child.* Although the Department of Family Services has
17 been involved with this family for many years, the only substantiated
18 finding against Lacey occurred in September 2010. No ongoing abuse
19 or neglect was demonstrated. This factor is neutral.
20
21

22 *Whether either parent has engaged in an act of domestic*
23 *violence against the child, a parent of the child or any other person*
24 *residing with the child.* No evidence was presented concerning this
25 factor.
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1 *Whether either parent has engaged in an act of abduction.* No
2
3 evidence was presented concerning this factor.

4 Desmon bore the burden of establishing that it would be in the child's
5 best interests to modify the primary physical custodial order as the second
6 prong in *Ellis* and as the standard under *Truax*. He met that burden and
7 demonstrated that a modification to the controlling order would be in the
8 best interest of the child. Neither party established that the other is
9 incapable of adequately caring for the child for 146 days per year. As such,
10 a modification of physical custody is appropriate on this record. *See* NRS
11 125C.003. It is in the best interests of the child that the parties be awarded
12 joint physical custody. Certainly, this determination is predicated on Lacey
13 maintaining her sobriety.
14

15 The last child support order was entered by the child support court in
16 November 2020, presuming that the controlling order was still the custodial
17 situation. Given the change in the controlling order, it is appropriate that
18 child support be reviewed. Applying Desmon's GMI of \$8,345.00 to the
19 regulatory formula results in a monthly obligation of \$1,147.00; applying
20 Lacey's GMI of \$2,283.00 to the regulatory formula results in a monthly
21 obligation of \$365.00. *See* NAC 425.145. Such would bring the Desmon's
22 current calculated monthly child support obligation to \$782.00. The
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1 monthly out-of-pocket cost for insuring the child, if any, should be equally
2 divided by the parties. See NAC 425.135. No additional adjustment
3 evidence was provided pursuant to NAC 425.150.
4

5 Desmon argues for a waiver of the child support arrearages as it is
6 undisputed that he maintained *de facto* primary custody since before he
7 stopped making his child support payments to Lacey. The Nevada Supreme
8 Court determined that “equitable defenses such as estoppel or waiver may be
9 asserted by the obligor in a proceeding to enforce or modify an order for
10 child support.” *Parkinson v. Parkinson*, 106 Nev. 481, 483, 796 P.2d 229,
11 231 (1990), *abrogated on other grounds by Rivero v. Rivero*, 125 Nev. 410,
12 216 P.3d 213 (2009).
13
14
15

16 Lacey admits the *de facto* change in custody. She stated that she did
17 not seek support because Desmon was caring for the child. Her request for
18 child support arrears currently, for August 2015 forward, is not supported.
19 Lacey waived her right to collect child support. The child has not
20 consistently resided with Lacey, with the exception of summers, since 2012.
21
22

23 The child support court, in November 2020, considered that Lacey
24 was the primary physical custodian and determined their modified child
25 support obligation was to begin in August 2020. However, the parties were
26 exercising *de facto* joint physical custody during that period. Beginning in
27
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1 January 2021, the *de facto* arrangement was primary physical to Desmon.
2
3 As such, the child support court's unspecified arrears are appropriate to be
4 resolved in this Order.

5 The Court considered NRS 18.010 and the relative income of the
6 parties. With the exception of the last year, the parties have cooperated in
7 their custody of the child, presumably with the best interests of the child at
8 heart. Their cooperation should not be discouraged. As such, each side
9 shall bear their own attorney's fees and costs.
10
11

12 Decision

13 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that
14 Desmon's motion to modify physical custody is granted and it is in the best
15 interests of the child that the parties are awarded joint physical custody.
16 Lacey is not to partake in drugs. A relapse would be a basis for this Court to
17 revisit this decision.
18
19

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
21 parties shall continue to share joint legal custody.
22

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that,
24 given the joint physical custody determination, Desmon's monthly child
25 support obligation shall be set at \$782.00 beginning June 2021. The parties
26 are also directed to equally share in the health insurance premium out-of-
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1 pocket cost for insuring the child. Such support shall continue until further
2 order of the Court, upon a three year review, or substantial change of
3 circumstances.
4

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that,
6 Lacey's request to receive child support arrears going back to 2015 is
7 DENIED. However, since the child support court's determination that
8 Desmon's child support obligation of \$1,040.00 begin August 2020, when
9 the parties were actually exercising joint physical custody, such necessitates
10 modification by this Court. Desmon's child support between August 2020
11 and December 2020, when the parties were exercising *de facto* joint physical
12 custody should be calculated at \$782.00 per month, for a total of \$3,910.00.
13 Lacey's child support obligation for the months of January 2021 through
14 May 2021 should have been set at \$365.00 per month because Desmon
15 maintained *de facto* primary physical custody during that time. Such totals
16 \$1,825.00. Offsetting those obligations results in the net amount of
17 Desmon's obligation to Lacey, between August 2020 and May 2021, being
18 \$2,085.00. Such amount should be reduced by payments made by Desmon
19 to Lacey during that time frame. The child support court is directed to
20 implement this revised calculation as part of its enforcement.
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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that it
2
3 is in the child's best interest that the parties' custodial schedule be defined as
4 follows to permit the child and Desmon's other child to exercise their visits
5 together:
6

7 Week One: Desmon shall have custodial time with the child from
8 Wednesday through Friday.

9 Week Two: Desmon shall have custodial time with the child from
10 Thursday through Sunday

11 The balance of the custodial time shall be exercised by Lacey.
12

13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
14 parties are to continue to rotate the tax deduction as stated within the SAO.
15 There is no reason to adjust prior years and the deductions taken were
16 supported by the custody arrangement.
17

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
19 each side shall bear their own attorney's fees and costs.
20

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all
22 prior orders, not modified by this Order, shall remain in full force and effect.
23

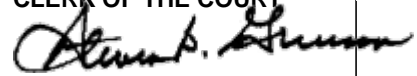
24 IT IS SO ORDERED this 7th day of June, 2021

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CHARLES J. HOSKIN
District Court Judge

NEO

Electronically Filed
6/7/2021 4:05 PM
Steven D. Grierson
CLERK OF THE COURT



DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

Desmon Brandes, Plaintiff.
vs.
Lacey Pictum, Defendant.

Case No: D-10-440022-C
Department E

NOTICE OF ENTRY OF ORDER

Please take notice that the FINDINGS of FACT, CONCLUSIONS of
LAW and ORDER from June 1, 2021 Hearing was entered in the
foregoing action and the following is a true and correct copy thereof.

Dated: June 07, 2021

/s/ Sherri Estes

Sherri Estes
Judicial Executive Assistant
Department E

CERTIFICATE OF SERVICE

I hereby certify that on the above file stamp date:

☐ I placed a copy of the foregoing NOTICE OF ENTRY OF ORDER in the appropriate attorney folder located in the Clerk of the Court's Office of:

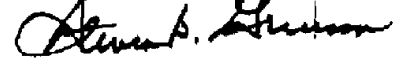
☒ I provided the foregoing NOTICE OF ENTRY OF ORDER to:

Bruce I. Shapiro
bruce@pecoslawgroup.com

Lacey Pictum
Laceykrynzal@gmail.com

____/s/ Sherri Estes____

Sherri Estes
Judicial Executive Assistant
Department E



1 ORDR
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4 **DISTRICT COURT**
5 **FAMILY DIVISION**
6 **CLARK COUNTY, NEVADA**
7

8 **BRANDES, DESMON,**
9 **Plaintiff,**

Case No.: D-10-440022-C
Dept.: E

10 v.

Date: June 1, 2021
Time: 1:30 p.m.

11 **PICTUM, LACEY, nka KRUNZEL**
12
13 **Defendant.**
14

15
16 **FINDINGS OF FACT, CONCLUSIONS OF LAW AND**
17 **ORDER**
18

19 This matter having come on for Evidentiary Hearing, via video, on the
20 1st day of June, 2021, for the Court to consider Plaintiff's request for
21 modification of custody; Plaintiff, Desmond Brandes (Desmon) being present,
22 and represented by Bruce Shaprio, Esq.; Defendant, Lacey Krunzel (Lacey)
23 being present, and representing herself. The Court, having heard the
24 evidence and arguments presented, taking the matter under advisement, finds
25 and orders as follows.
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☐ Other
☐ Dismissed - Want of Prosecution
☐ Involuntary (Statutory) Dismissal
☐ Default Judgment
☐ Transferred
☐ Disposed After Trial Rtn
☐ Judgment Received by Trial
☐ Settled/Withdrawn
☐ Without Judicial Conf/Htg
☐ With Judicial Conf/Htg
☐ By ADR
☐ Trial Disposition:
☐ Judgment Received by Trial

CHARLES J. BOSKIN
DISTRICT JUDGE
FAMILY DIVISION DEPT. E
LAS VEGAS, NV 89101-2108

1
2 **Statement of the Case**

3 The parties' permanent custody arrangement is defined by their
4 Stipulation and Order, filed July 5, 2011 (SAO). That SAO awards the
5 parties joint legal custody and Lacey primary physical custody of their minor
6 child: Page, born April 5, 2007 (child). Desmon's visitation schedule was
7 "two (2) days on weekdays and every other weekend." Desmon's monthly
8 child support obligation was established at \$400.00. As such, primary
9 physical custody to Lacey is the controlling permanent custody order.
10
11

12 On November 18, 2020, Desmon filed his *Motion to Modify Custody*
13 *to Joint Physical Custody; to Set Child Support; for Finding of No Child*
14 *Support Arrears; For Attorney's Fees; and for Related Relief.* On
15 December 7, 2020, Lacey filed her *Opposition and Countermotion to Hold*
16 *Plaintiff in Contempt of Court; Referral to Mediation; for Award of Fees*
17 *and Costs; for Sanctions and Related Relief.*
18
19

20 On November 23, 2020, in the child support case, R-20-215032-R,
21 Desmon's child support obligation was modified to \$1,040.00 per month,
22 effective August 2020. That Recommendation and Order was entered on
23 December 16, 2020. The Order is unclear, however, concerning whether the
24 child support court assessed arrears. An arrears payment is established, but
25 no arrears are listed.
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1 At the January 19, 2021 hearing, Lacey was referred for drug testing
2 and a temporary joint physical custody and visitation schedule was
3 implemented. On week one, Desmon was to have the care of the child
4 Thursday through Sunday; on week two Desmon was to have the care of the
5 child Wednesday through Friday. An Evidentiary Hearing was set on
6 Desmon's request to modify physical custody. The drug test results
7 demonstrated a very low level of THC in Lacey's urine.
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11 At the May 18, 2021 Calendar Call, the Evidentiary Hearing was set
12 firm.
13

14 Findings of Fact

15 That this Court has personal and subject matter jurisdiction in this
16 case.
17

18 That Desmon testified in his case-in-chief. He has worked for NV
19 Energy for 23 years. He has another child, Jayden, who is 16 years old
20 whom he shares joint physical custody with that child's mother.
21

22 That, as of January 2021, the child has resided primarily with him.
23 The child came to him with a video of Lacey, which concerned her, and has
24 since been in his primary care. The child has seen Lacey a handful of times
25 since January 2020 and at the child's softball tournaments. Between January
26 2021 and the Trial, Lacey has exercised one overnight visit with the child.
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28

1 That Desmon indicated that, following the July 2011 SAO, the parties
2 exercised joint physical custody. That situation stopped in late 2011 or early
3 2012. Desmon indicated that, with Lacey's agreement, the child then began
4 living full time with him.
5

6 That, when Lacey went into rehab in California, the child would
7 contact her by telephone. After Lacey's return from rehab, the child visited
8 her on weekends and during the summers. Lacey was living with her
9 parents at that point.
10

11 That Desmon indicated that the child has always attended school in
12 the zone determined from his home. During the summers the child would
13 spend every other weekend with Desmon. Between 2012 and 2016,
14 following Lacey's return from rehab, prior to exercising visits with the child,
15 Lacey would take an at-home drug test. If it was not clean, Lacey would not
16 get visitation.
17

18 That Lacey moved out of her parent's home in 2016. The prior
19 schedule of every-other weekend and summers with Lacey continued.
20

21 That, in March 2020, when schools closed due to Covid, Desmon
22 decided to "start the summer early" and permit the child to start the schedule
23 with Lacey, typically reserved for summer break. Desmon was then
24 exercising every other weekend through August 2020. The child then
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1 followed the same schedule as Desmon's other child, visiting three days one
2 week and four days the next week.
3

4 That Desmon testified that, for the majority of the last ten years, he
5 has been the *de facto* primary physical custodian. He did not return to court
6 to confirm that because he did not see a reason to do so. Desmon told Lacey
7 that she did not need to pay him child support.
8

9 That Exhibit 3 is a video, taken by the child of Lacey, where Lacey
10 appears to be impaired. Exhibit 1 is a text exchange between the child and
11 Desmon's other child regarding the child's concerns relating to Lacey being
12 impaired. Exhibit 4 is a text exchange between Lacey and the child
13 regarding the child's concerns about Lacey's drug use and desire to remain
14 with Desmon until Lacey gets "better."
15

16 That Desmon paid his child support obligation from the July 2011
17
18 SAO until mid-2012. He had *de facto* primary custody at that time and
19 Lacey agreed to the support arrangement.
20

21 That, on cross-examination, Desmon agreed that, following Lacey's
22 return from rehab, her supervised visitation went to every other weekend
23 within a few months. Desmon agreed to Lacey seeing the child with her
24 parent's supervision without a court order. Lacey's weekend visits were
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1 from Friday, after school, until Monday at school. That schedule continued
2 until March 2020.
3

4 That Desmon confirmed that he has not seen Lacey on drugs since
5 2015.
6

7 That Lacey testified in Desmon's case-in-chief and then in her case-
8 in-chief. She was in in-patient rehab, in California, for 45 days. After that,
9 she always had the child during the summers in addition to the weekends.
10

11 That Lacey confirmed that, since 2011, she has not exercised primary
12 physical custody. She indicated that she is fighting to get custody back.
13 Between March 2020 and December 2020, Lacey stated that the parties had
14 "50/50" custody.
15

16 That, in January 2021, Lacey agreed that the child could remain
17 primarily with Desmon. She believed that, following the drug test, the child
18 would come back. While Lacey understands the child's concerns, she
19 believes that the child is being kept from her.
20

21 That Lacey discussed her prior employment and that she was found
22 unresponsive at her desk on two occasions. She was let go from that
23 employment for excessive absences.
24

25 That Lacey discussed her health issues. Her doctor recommended that
26 she have her appendix removed, but she refused. Lacey confirmed that she
27
28

1 refused to sign the HIPPA release and permit Desmon to review her medical
2 records. Lacey has been taking Soboxon since 2015. She does not believe it
3 is an opioid.
4

5 That Lacey agreed that Desmon could claim the child on his taxes
6 until she was better. Desmon stopped paying her child support when she
7 went to rehab. She agreed that he did not need to pay her further child
8 support until she got better. She now states that she is only asking for child
9 support from 2015 forward. Lacey admitted to not pursuing child support,
10 but she wants it now.
11
12

13 That, when the child support case was opened by the State, Lacey did
14 not tell the District Attorney, Family Support about the parties agreement
15 concerning child support.
16

17 That Lacey last worked in 2018 and earned \$15.00 per hour. Since
18 then, she has only worked in her husband's business. She is receiving
19 unemployment benefits of \$527.00 per week.
20

21 That, on cross-examination, Lacey again confirmed that, following
22 rehab, she left the child primarily with Desmon. Notwithstanding the agreed
23 *de facto* arrangement, she wants child support arrears from August 2015
24 until the present.
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1 That Lacey went through the historical custodial arrangements. Until
2
3 2013/2014, Lacey stated she had 35% of the time with the child because of
4 school. She did not object to every-other weekend contact. Lacey never
5 requested to modify the arrangement or child support. She did not come
6 after Desmon for support because he was the one caring for the child.
7

8 That Lacey has been making payments for the child's softball
9 participation.
10

11 That Desmon's January 11, 2021 Financial Disclosure Form (FDF)
12 represents a gross monthly income (GMI) of \$8,345.00. Lacey's May 10,
13 2021 FDF indicates a GMI of \$2,283.00 from unemployment.
14

15 **Conclusions of Law**

16 The controlling custody order is joint legal and primary physical
17 custody to Lacey. Shortly after that SAO was entered, the parties agreed to
18 Desmon acting as *de facto* primary custodian.
19

20 Although this Court entered a temporary joint physical custody order
21 at the January 19, 2021 hearing, the parties have not followed that order
22 either.
23

24 In this case, Desmon's Motion requested joint physical custody of the
25 child. However, he argued for primary physical custody at the Trial. Lacey
26
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1 is requesting to maintain the primary physical custody SAO, which she
2 admits the parties have not followed for almost a decade.

3
4 Regarding modifying physical custody, NRS 125C.0045 states:

5 “1. In any action for determining the custody of a minor child, the
6 court may, except as otherwise provided in this section and NRS
7 125C.0601 to 125C.0693, inclusive, and chapter 130 of NRS:

8 (a) During the pendency of the action, at the final hearing or at
9 any time thereafter during the minority of the child, make such
10 an order for the custody, care, education, maintenance and
11 support of the minor child as appears in his or her best interest;
12 and

13 (b) At any time modify or vacate its order, even if custody was
14 determined pursuant to an action for divorce and the divorce
15 was obtained by default without an appearance in the action by
16 one of the parties.

17 The party seeking such an order shall submit to the jurisdiction of the
18 court for the purposes of this subsection. The court may make such an
19 order upon the application of one of the parties or the legal guardian
20 of the minor.

21 2. Any order for joint custody may be modified or terminated by the
22 court upon the petition of one or both parents or on the court's own
23 motion if it is shown that the best interest of the child requires the
24 modification or termination. The court shall state in its decision the
25 reasons for the order of modification or termination if either parent
26 opposes it.”

27 In determining whether to modify a primary physical custodial order,
28 the movant must establish that there has been a substantial change of
circumstances, affecting the child, since the most recent custody order and

1 that the child's best interests would be served by the change. *Ellis v.*
2 *Carucci*, 123 Nev. 145, 147, 161 P.3d 239, 240 (2007). In determining
3 whether to modify a joint physical custodial order, the movant must
4 establish that the change would serve the child's best interests. *Truax v.*
5 *Truax*, 110 Nev. 437, 439, 874 P.2d 10, 11 (1994).
6
7

8 It is undisputed that Desmon maintained *de facto* primary custody for
9 the majority of the last ten years. It is also undisputed that, between March
10 2020 and August 2020, the child resided primarily with Lacey on an
11 extended "summer schedule." As the parties have essentially never followed
12 the SAO, it is necessary that this Court entertain a *Rivero* look back.
13
14

15 The Nevada Supreme Court gave direction when calculating the
16 timeshare exercised by the parties.
17

18 "The district court should calculate the time during which a party has
19 physical custody of a child over one calendar year. Each parent must
20 have physical custody of the child at least 40 percent of the time,
21 which is 146 days per year. Calculating the timeshare over a one-year
22 period allows the court to consider weekly arrangements as well as
23 any deviations from those arrangements such as emergencies,
24 holidays, and summer vacation. In calculating the time during which a
25 party has physical custody of the child, the district court should look
26 at the number of days during which a party provided supervision of
27 the child, the child resided with the party, and during which the party
28 made the day-to-day decisions regarding the child. . . .

Therefore, absent evidence that joint physical custody is not in the
best interest of the child, if each parent has physical custody of the

1 child at least 40 percent of the time, then the arrangement is one of
2 joint physical custody.”

3
4 *Rivero v. Rivero*, 125 Nev. 410, 427, 216 P.3d 213, 225 (2009). The *Rivero*
5 court goes on to conclude that the “district court must apply Nevada's
6 physical custody definition—not the parties' definition.” *Id.* at 429.

7
8 All evidence establishes that the custody arrangement which existed
9 between 2012 and 2020 would be defined as primary physical custody to
10 Desmon; Lacey maintained primary physical custody between March 2020
11 and August 2020; the parties maintained joint physical custody between
12 August 2020 and December 2020, which was also temporarily ordered at the
13 January 2021 hearing; and primary physical custody was exercised by
14 Desmon between January 2021 through the June 1, 2020 Evidentiary
15 Hearing.
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19 The law in this State is unclear on how to appropriately address a
20 request for modification of physical custody when a controlling order is
21 primary physical custody to one party, and the actions of the parties for a
22 decade, has been primary physical custody to the other party, who is the
23 non-custodial parent in the controlling order. The law is also unclear on
24 how to analyze a situation where, over the last 15 month, a *de facto* primary
25 custody arrangement to one party existed for five months, a *de facto* primary
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1 custody arrangement to the other party for five months and a *de facto* joint
2 physical custody for has been exercised for five months. Since it can be
3 reasonably argued that either *Ellis* or *Truax* could control depending whether
4 the *de facto* situation or permanent order is controlling, and that a best
5 interest analysis is contained in both approaches, this Court will analyze the
6 evidence presented under both scenarios prior to resolving the custody
7 modification issue.

10
11 Since Lacey went to California to deal with her addiction issues,
12 Desmon has acted as primary physical custodian. This Court appreciates
13 Lacey's understanding, over the last decade, that maintaining the controlling
14 order would not have been in the best interests of the child. Such indicates a
15 desire to serve the child's best interests. Similarly, this Court appreciates
16 Desmon's willingness to step in and primarily care for the child while Lacey
17 worked through her issues.

20 The parties worked together and cooperated in an effort to serve the
21 best interests of the child during Lacey's issues. The best interests of child
22 are served by parents who are able to work through situations and agree to
23 co-parent with the child's best interest as their focus. Such is what occurred
24 since shortly following the SAO. This Court will not punish a parent for
25 looking out for the best interests of the child.

1 The “*Rivero* look back” through 2012 results in a determination that
2
3 Desmon is the *de facto* primary physical custodian. *See Rivero* at 427.
4 However, over the last 15 months, Desmon has been the primary physical
5 custodian for five months; Lacey has been the primary physical custodian
6 for five months; and the parties shared joint physical custody for five
7 months. While *Rivero* defines what constitutes primary physical custody
8 and that a year is a reasonable amount of time to assess the schedule, it does
9 not indicate that demonstration of the same automatically results in a
10 substantial change of circumstance finding.
11

12
13 Desmon bore the burden of establishing the factors necessary to
14 modify custody. Parents cooperating to serve the best interests of the child
15 while one parents struggles with an addiction is what is best for child.
16 However, the ongoing and continuing maintaining of *de facto* primary
17 custody to the “non-custodial” parent for such a substantial period satisfies a
18 substantial change of circumstances affecting the child. Thus, Desmon
19 meets the first prong under *Ellis*.
20
21

22
23 The Court will also look to whether a modification would be in the
24 child’s best interests pursuant to both *Ellis* and *Truax*.
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1 In analyzing the best interest of the child, the court must analyze the
2 factors enumerated in NRS 125C.0035(4). Those factors are reviewed
3 below:
4

5 *The wishes of the child if the child is of sufficient age and*
6 *capacity to form an intelligent preference as to his or her physical*
7 *custody.* The child is 14 years old and of sufficient age and capacity
8 to form an intelligent preference. Evidence indicates that the child
9 expressed a desire to reside with Desmon until Lacey got better.
10 Given the drug test results from January 2021, it appears that drug use
11 is not a current concern. Lacey indicates that she understands the
12 child's concern. This factor favors Desmon.
13

14 *Any nomination of a guardian for the child by a parent.* No
15 nomination occurred in this case.
16

17 *Which parent is more likely to allow the child to have frequent*
18 *associations and a continuing relationship with the noncustodial*
19 *parent.* The parties worked together when Lacey went into rehab and
20 Lacey agreed to Desmon exercising primary care of the child.
21 Desmon has worked with Lacey and permitted her to maintain
22 reasonable contact following her rehab. This factor is neutral.
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1 *The level of conflict between the parents.* Minimal evidence
2
3 concerning this factor was presented. The parties have shared
4 information and been able to exchange the child throughout. They
5 have agreed upon specific duties relating to the child notwithstanding
6 minimal communication between the parties. Conflict is low. The
7 factor is neutral.
8

9 *The ability of the parents to cooperate to meet the needs of the*
10 *child.* Prior to the current litigation, the parties were able to cooperate
11 to meet the needs of the child. They were model parents in the area of
12 cooperation and permitting the other to spend time with the child.
13 Since July 2020, that circumstance has changed as a result of the
14 conflict concerning primary custody and, presumably, child support.
15 This factor is neutral.
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19 *The mental and physical health of the parents.* Lacey has
20 demonstrated addiction issues. Such is the reason the parties changed
21 custody in 2012 and the reason the child chose to reside primarily
22 with Desmon earlier this year. No health issues relating to Desmon
23 were presented. This factor favors Desmon.
24
25

26 *The physical, developmental and emotional needs of the child.*
27 Desmon handles the physical needs of the child. For many years,
28

1 these parents have been able to work together to insure that the needs
2 of the child have been met. This factor is neutral.

4 *The nature of the relationship of the child with each parent.*

5 Neither party specifically discussed their relationship with the child.
6 Ultimately, this factor is neutral.

8 *The ability to maintain a relationship with a sibling.* Desmon

9 has another child whom he maintains joint physical custody. The
10 child has a good relationship with that sibling. Lacey did not
11 reference any siblings in her household, although the record indicates
12 other children in her home. This factor favors Desmon.

14 *Any history of parental abuse or neglect of the child or a*
15 *sibling of the child.* Although the Department of Family Services has
16 been involved with this family for many years, the only substantiated
17 finding against Lacey occurred in September 2010. No ongoing abuse
18 or neglect was demonstrated. This factor is neutral.

20 *Whether either parent has engaged in an act of domestic*
21 *violence against the child, a parent of the child or any other person*
22 *residing with the child.* No evidence was presented concerning this
23 factor.

1 *Whether either parent has engaged in an act of abduction.* No
2
3 evidence was presented concerning this factor.

4 Desmon bore the burden of establishing that it would be in the child's
5 best interests to modify the primary physical custodial order as the second
6 prong in *Ellis* and as the standard under *Truax*. He met that burden and
7 demonstrated that a modification to the controlling order would be in the
8 best interest of the child. Neither party established that the other is
9 incapable of adequately caring for the child for 146 days per year. As such,
10 a modification of physical custody is appropriate on this record. *See* NRS
11 125C.003. It is in the best interests of the child that the parties be awarded
12 joint physical custody. Certainly, this determination is predicated on Lacey
13 maintaining her sobriety.
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18 The last child support order was entered by the child support court in
19 November 2020, presuming that the controlling order was still the custodial
20 situation. Given the change in the controlling order, it is appropriate that
21 child support be reviewed. Applying Desmon's GMI of \$8,345.00 to the
22 regulatory formula results in a monthly obligation of \$1,147.00; applying
23 Lacey's GMI of \$2,283.00 to the regulatory formula results in a monthly
24 obligation of \$365.00. *See* NAC 425.145. Such would bring the Desmon's
25 current calculated monthly child support obligation to \$782.00. The
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1 monthly out-of-pocket cost for insuring the child, if any, should be equally
2 divided by the parties. *See* NAC 425.135. No additional adjustment
3 evidence was provided pursuant to NAC 425.150.
4

5 Desmon argues for a waiver of the child support arrearages as it is
6 undisputed that he maintained *de facto* primary custody since before he
7 stopped making his child support payments to Lacey. The Nevada Supreme
8 Court determined that “equitable defenses such as estoppel or waiver may be
9 asserted by the obligor in a proceeding to enforce or modify an order for
10 child support.” *Parkinson v. Parkinson*, 106 Nev. 481, 483, 796 P.2d 229,
11 231 (1990), *abrogated on other grounds by Rivero v. Rivero*, 125 Nev. 410,
12 216 P.3d 213 (2009).
13
14
15

16 Lacey admits the *de facto* change in custody. She stated that she did
17 not seek support because Desmon was caring for the child. Her request for
18 child support arrears currently, for August 2015 forward, is not supported.
19 Lacey waived her right to collect child support. The child has not
20 consistently resided with Lacey, with the exception of summers, since 2012.
21
22

23 The child support court, in November 2020, considered that Lacey
24 was the primary physical custodian and determined their modified child
25 support obligation was to begin in August 2020. However, the parties were
26 exercising *de facto* joint physical custody during that period. Beginning in
27
28

1 January 2021, the *de facto* arrangement was primary physical to Desmon.
2
3 As such, the child support court's unspecified arrears are appropriate to be
4 resolved in this Order.

5 The Court considered NRS 18.010 and the relative income of the
6 parties. With the exception of the last year, the parties have cooperated in
7 their custody of the child, presumably with the best interests of the child at
8 heart. Their cooperation should not be discouraged. As such, each side
9 shall bear their own attorney's fees and costs.
10
11

12 **Decision**

13 IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that
14 Desmon's motion to modify physical custody is granted and it is in the best
15 interests of the child that the parties are awarded joint physical custody.
16 Lacey is not to partake in drugs. A relapse would be a basis for this Court to
17 revisit this decision.
18
19

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
21 parties shall continue to share joint legal custody.
22

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that,
24 given the joint physical custody determination, Desmon's monthly child
25 support obligation shall be set at \$782.00 beginning June 2021. The parties
26 are also directed to equally share in the health insurance premium out-of-
27
28

1 pocket cost for insuring the child. Such support shall continue until further
2 order of the Court, upon a three year review, or substantial change of
3 circumstances.
4

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that,
6 Lacey's request to receive child support arrears going back to 2015 is
7 DENIED. However, since the child support court's determination that
8 Desmon's child support obligation of \$1,040.00 begin August 2020, when
9 the parties were actually exercising joint physical custody, such necessitates
10 modification by this Court. Desmon's child support between August 2020
11 and December 2020, when the parties were exercising *de facto* joint physical
12 custody should be calculated at \$782.00 per month, for a total of \$3,910.00.
13 Lacey's child support obligation for the months of January 2021 through
14 May 2021 should have been set at \$365.00 per month because Desmon
15 maintained *de facto* primary physical custody during that time. Such totals
16 \$1,825.00. Offsetting those obligations results in the net amount of
17 Desmon's obligation to Lacey, between August 2020 and May 2021, being
18 \$2,085.00. Such amount should be reduced by payments made by Desmon
19 to Lacey during that time frame. The child support court is directed to
20 implement this revised calculation as part of its enforcement.
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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that it
2
3 is in the child's best interest that the parties' custodial schedule be defined as
4 follows to permit the child and Desmon's other child to exercise their visits
5 together:
6

7 Week One: Desmon shall have custodial time with the child from
8 Wednesday through Friday.

9 Week Two: Desmon shall have custodial time with the child from
10 Thursday through Sunday

11 The balance of the custodial time shall be exercised by Lacey.
12

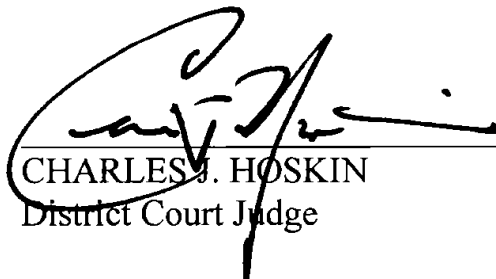
13 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
14 parties are to continue to rotate the tax deduction as stated within the SAO.
15 There is no reason to adjust prior years and the deductions taken were
16 supported by the custody arrangement.
17

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
19 each side shall bear their own attorney's fees and costs.
20

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all
22 prior orders, not modified by this Order, shall remain in full force and effect.
23

24 IT IS SO ORDERED this 7th day of June, 2021

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CHARLES J. HOSKIN
District Court Judge

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

February 16, 2011

D-10-440022-C Desmon Brandes, Plaintiff.
vs.
Lacey Pictum, Defendant.

February 16, 2011 9:00 AM Motion for Child Custody

HEARD BY: Hoskin, Charles J.

COURTROOM: Courtroom 02

COURT CLERK: Kim Jones

PARTIES:

Desmon Brandes, Plaintiff, Counter Defendant, present	Pro Se
Lacey Pictum, Defendant, Counter Claimant, present	Pro Se
Paige Brandes, Subject Minor, not present	

JOURNAL ENTRIES

- Brandon McCoy, Esq., #10402, appearing in an unbundled capacity for Plaintiff.

Argument by counsel.

COURT ADVISED, the Case Management Conference will be heard today and an evidentiary hearing will be set. The parties have agreed that Defendant was the primary physical custodian of the child for the first few years of his life.

COURT ORDERED, Defendant referred to ATI for a drug test today.

TEMPORARILY, Plaintiff awarded PRIMARY PHYSICAL CUSTODY. Defendant's TEMPORARY VISITATION will be Tuesday and Thursdays evenings from 5:00 PM until 8:00 PM with Maternal Grandparents supervising. Defendant will also have every other weekend beginning February 18, 2011 from Friday at 5:30 PM until Sunday at 8:00 PM. The evening time will be supervised by Maternal Grandparents with Defendant having unsupervised contact during the daytime.

PRINT DATE:	08/19/2021	Page 1 of 14	Minutes Date:	February 16, 2011
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Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

Receiving party will pick up for the exchanges, except for Tuesday and Thursdays, it will be Defendant's responsibility to transport. The child is to be returned to Plaintiff today at 8:00 PM.

The request for child support and attorney's fees is DEFERRED.

Mr. Kelleher is to prepare the order and Mr. McCoy is to sign off.

3/08/11 10:00 AM RETURN: DRUG TEST RESULTS

6/21/11 11:00 AM CALENDAR CALL

7/05/11 1:30 PM EVIDENTIARY HEARING - STACK #2

INTERIM CONDITIONS:

FUTURE HEARINGS:

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint**COURT MINUTES**

March 08, 2011

D-10-440022-C Desmon Brandes, Plaintiff.
 vs.
 Lacey Pictum, Defendant.

March 08, 2011 10:00 AM Return Hearing

HEARD BY: Hoskin, Charles J.**COURTROOM:** Courtroom 02**COURT CLERK:** Kim Jones**PARTIES:**

Desmon Brandes, Plaintiff, Counter Pro Se
 Defendant, present
 Lacey Pictum, Defendant, Counter Claimant, Pro Se
 present
 Paige Brandes, Subject Minor, not present

JOURNAL ENTRIES

- Brandon McCoy, Esq., #10402, appearing on behalf of Plaintiff in an unbundled capacity.

COURT NOTED, the drug test results were negative. Mr. Kelleher stated he sent Defendant for another drug test and those results were clean also.

Argument by counsel regarding Defendant's request for enhanced visitation time.

COURT ORDERED, pending the evidentiary hearing set for July 5, 2011, Plaintiff may call Mr. Kelleher's office four times for Defendant to undergo a random drug test. Defendant is to report for the drug test within one hour of the call to Mr. Kelleher's office. Defendant provided with two ATI referral forms in open Court. If more referral forms are necessary, they can be obtained from the Court.

TEMPORARILY, parties awarded JOINT PHYSICAL CUSTODY with Defendant's TIMESHARE being from Sunday at 8:00 PM until Thursday at 5:00 PM and Plaintiff will have the child from Thursday at 5:00 PM until Sunday at 8:00 PM.

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The calendar call and evidentiary hearing dates STAND.

Mr. Kelleher is to prepare the order and Mr. McCoy is to sign off. COURT directed Mr. Kelleher to submit the order from the February 16, 2011 hearing.

INTERIM CONDITIONS:

FUTURE HEARINGS: Mar 08, 2011 10:00AM Return Hearing
Drug Test Results
Courtroom 02 Hoskin, Charles J.

Jun 21, 2011 11:00AM Calendar Call
Courtroom 02 Hoskin, Charles J.

June 21, 2011

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

July 20, 2011

D-10-440022-C Desmon Brandes, Plaintiff.
 vs.
 Lacey Pictum, Defendant.

July 20, 2011 10:00 AM Motion for Withdrawal

HEARD BY: Hoskin, Charles J.

COURTROOM: Courtroom 02

COURT CLERK: Kim Jones

PARTIES:

Desmon Brandes, Plaintiff, Counter Bruce Shapiro, Attorney, not present
Defendant, not present
Lacey Pictum, Defendant, Counter Claimant, Pro Se
not present
Paige Brandes, Subject Minor, not present

JOURNAL ENTRIES

- BRANDON W. MCCOY'S MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF

Brandon McCoy, Esq., #10402, appearing on behalf of his motion.

There being appropriate service and no opposition, COURT ORDERED, motion GRANTED. Order signed in open Court.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

January 19, 2021

D-10-440022-C Desmon Brandes, Plaintiff.
vs.
Lacey Pictum, Defendant.

January 19, 2021 9:00 AM All Pending Motions

HEARD BY: Hoskin, Charles J.

COURTROOM: Courtroom 02

COURT CLERK: Blanca Madrigal; Sheila Bourne

PARTIES:

Desmon Brandes, Plaintiff, Counter Defendant, present	Bruce Shapiro, Attorney, present
Lacey Pictum, Defendant, Counter Claimant, present	Pro Se
Paige Brandes, Subject Minor, not present	

JOURNAL ENTRIES

- PLAINTIFF'S MOTION TO MODIFY CUSTODY TO JOINT PHYSICAL CUSTODY; TO SET CHILD SUPPORT; FOR FINDING OF NO CHILD SUPPORT ARREARS; FOR ATTORNEY'S FEES; AND FOR RELATED RELIEF...DEFENDANT'S OPPOSITION AND COUNTERMOTION TO HOLD PLAINTIFF IN CONTEMPT OF COURT; REFERRAL TO MEDIATION; FOR AWARD OF FEES AND COSTS; FOR SANCTIONS AND RELATED RELIEF...PLAINTIFF'S REPLY IN SUPPORT OF MOTION AND OPPOSITION TO COUNTERMOTION

Court Clerks: Sheila Bourne, Blanca Madrigal (mb).

In the interest of public safety due to the Coronavirus pandemic, all parties were present via VIDEO CONFERENCE through the BlueJeans application.

Arguments regarding modification of custody. Mr. Shapiro argued that Mom was terminated from her job due to drug use. That Child Protective Services were contacted, and the minor is safe with Dad. Mr. Shapiro requested a child interview and alleged Dad has been the primary caregiver for the past ten (10) years.

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Mom requested a continuance to obtain counsel. Mom alleged that custody had been 50% each since August.

The Court read the text messages and had some concerns.

COURT ORDERED:

- 1) Mom was referred to American Toxicology Institute (ATI) for a full drug screen. Mom must test today, 1/19/2021. A copy of the ATI Referral and Instructions emailed to Mom;
- 2) Pending the drug test result, the parties shall continue to exercise the following schedule: Week 1, Dad shall have the minor child Thursday through Sunday and Mom Monday through Wednesday. Week 2, Dad shall have the minor child Wednesday through Friday and Mom Saturday through Tuesday. If there is no issue with the drug test, the parties will continue to follow the schedule on a temporary basis;
- 3) On a temporary basis, the parties shall have JOINT PHYSICAL CUSTODY;
- 4) Mom shall file a Financial Disclosure Form before the Calendar Call date below;
- 5) Department E shall order the CPS records;
- 6) Plaintiff's request for a child interview is DEFERRED. If there are concerns with the drug test, the Court will refer the child to an interview;
- 7) The Court set the matter for an EVIDENTIARY HEARING to address custody and related issues on 6/01/2021 at 1:30 PM (Stack #2). The Case and Evidentiary Hearing Management Order was executed, FILED, and processed in Odyssey. A copy of the Order shall be emailed to counsel and Defendant;
- 8) CALENDAR CALL set for 5/18/2021 at 11:00 AM;
- 9) Mr. Shapiro shall prepare the Order.

INTERIM CONDITIONS:

FUTURE HEARINGS: May 18, 2021 11:00AM Calendar Call
Calendar Call (Stack #2)
Courtroom 02 Hoskin, Charles J.

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May 18, 2021 11:00AM Status Check
Defendant's Drug Test Results
Courtroom 02 Hoskin, Charles J.

Jun 01, 2021 1:30PM Evidentiary Hearing
Evidentiary Hearing Custody and Related Issues (FIRM SETTING - Video Appearances)
Courtroom 02 Hoskin, Charles J.

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

May 18, 2021

D-10-440022-C Desmon Brandes, Plaintiff.
vs.
Lacey Pictum, Defendant.

May 18, 2021 11:00 AM All Pending Motions

HEARD BY: Hoskin, Charles J.

COURTROOM: Courtroom 02

COURT CLERK: Blanca Madrigal

PARTIES:

Desmon Brandes, Plaintiff, Counter Bruce Shapiro, Attorney, present
Defendant, not present
Lacey Pictum, Defendant, Counter Claimant, Pro Se
present
Paige Brandes, Subject Minor, not present

JOURNAL ENTRIES

- CALENDAR CALL...STATUS CHECK: DEFENDANT'S DRUG TEST RESULTS

In the interest of public safety due to the Coronavirus pandemic, the matter was heard via VIDEO CONFERENCE through the BlueJeans application.

Both Mr. Shapiro and the Defendant agreed to move forward with trial.

COURT ORDERED:

- 1) Defendant to file her Pretrial Memorandum no later than close of business on 5/20/2021;
- 2) The Evidentiary Hearing scheduled on 6/01/2021 at 1:30 PM shall STAND and a FIRM DATE. Both counsel and Defendant stipulated to video appearances at trial.

INTERIM CONDITIONS:

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FUTURE HEARINGS:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Child Custody Complaint

COURT MINUTES

June 01, 2021

D-10-440022-C Desmon Brandes, Plaintiff.
vs.
Lacey Pictum, Defendant.

June 01, 2021 1:30 PM Evidentiary Hearing

HEARD BY: Hoskin, Charles J.

COURTROOM: Courtroom 02

COURT CLERK: Blanca Madrigal

PARTIES:

Desmon Brandes, Plaintiff, Counter Bruce Shapiro, Attorney, present
Defendant, present
Lacey Pictum, Defendant, Counter Claimant, Pro Se
present
Paige Brandes, Subject Minor, not present

JOURNAL ENTRIES

- EVIDENTIARY HEARING

In the interest of public safety due to the Coronavirus pandemic, the matter was heard via VIDEO CONFERENCE through the BlueJeans application.

Opening statements waived. Sworn testimony and Exhibits presented (see worksheets). Closing arguments by counsel.

COURT ORDERED the matter taken UNDER ADVISEMENT; the Court will issue its written decision. CASE CLOSED upon entry of same.

INTERIM CONDITIONS:

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FUTURE HEARINGS:

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EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

BRUCE I. SHAPIRO, ESQ.
8925 S. PECOS RD., SUITE 14A
HENDERSON, NV 89074

DATE: August 19, 2021
CASE: D-10-440022-C

RE CASE: DESMON BRANDES vs. LACEY PICTUM nka LACEY KRYNZEL

NOTICE OF APPEAL FILED: August 17, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

DESMON BRANDES,

Plaintiff(s),

vs.

LACEY PICTUM nka LACEY KRYNZEL,

Defendant(s),

Case No: D-10-440022-C

Dept No: E

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 19 day of August 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

