

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG MUELLER,	)	No. 83412	Electronically Filed
Appellant,	)		Jan 21 2022 01:09 p.m.
Vs.	)		Elizabeth A. Brown
	)	Related Dist. Court Case,	Clerk of Supreme Court
	)	8th Jud. Dist. Ct.	
CHRISTINA HINDS.	)	Case No. D-18-571065-D	
	)	Dept. C	
)		
	)	MOTION FOR LEAVE TO	
	)	REMOVE APPEAL FROM	
	)	CHILD CUSTODY FAST	
	)	TRACK PROGRAM AND	
	)	CONSOLIDATE WITH	
	)	RELATED APPEAL	

Appellant files this Motion seeking leave from this Court to remove this matter from the child custody fast track program. *See* NRAP 3E. It should be noted that Appellee filed a notice on November 17, 2021, that this case was likely incorrectly entered into the fast track program. Appellant subsequently filed a notice the same day agreeing that this case was appropriate for full briefing and only tangentially involved child custody.

This matter had been proceeding as a regular appeal until the Court amended the briefing schedule on October 6, 2021, directing Appellant to file the Child Custody Fast Track Statement within 40 days of the order.

Appellant agrees with Appellee that “since child custody was not in issue in any way in the underlying case” other than the request to vacate the Decree and the need for filing a child custody fast track statement is “highly curious.” Indeed, this appeal solely addresses money and property issues and Appellant’s “effort to set aside the money judgment in the Decree. This appeal is not, in fact, one dealing with issues of child custody.

Further, the issues raised in Appellant’s fast track statement in this appear are too numerous and complex to resolved via the fast track program. *See* NRAP 3E(g)(2). Indeed, all the cases Appellant could find that were resolved in the fast track program were cases dealing primarily or exclusively with child custody issues. *Dancer v. Dancer*, 131 Nev. 1269 (2015); *Vasaitis v. Matuska*, 130 Nev. 1257 (2014); *Keenan v. Keenan*, 130 Nev. 1204 (2014); *Peterson v. Peterson*, 130 Nev. 1229 (2014); *Cotto v. Purdum*, 130 Nev. 1166 (2014);

Busse v. Busse, 131 Nev. 1258 (2015); *Zrimsek v. Anderson*, 131 Nev. 1367 (2015); *Johnston v. Johnston*, No. 60068, 2013 Nev. Unpub. LEXIS 269, at *1 (Feb. 19, 2013); *Routon v. Routon*, No. 59332, 2012 Nev. Unpub. LEXIS 1573, at *3 (Nov. 16, 2012); *Childs v. Childs*, No. 56878, 2011 Nev. Unpub. LEXIS 1500, at *1 (June 9, 2011); *De Roo v. De Roo*, No. 60272, 2013 Nev. Unpub. LEXIS 253, at *1 (Feb. 15, 2013); *Behimer v. Ball*, 2016 Nev. App. Unpub. LEXIS 368, *1, 132 Nev. 945. Appellant found one case involving issues other than child custody resolved via the fast track program. *Edmands v. Edmands*, No. 58764, 2012 Nev. Unpub. LEXIS 1565, at *1 (Nov. 16, 2012). However, in *Edmands*, the primary issue on appeal was a challenge to “the district court's child custody designation,” and the remaining issues were related to child custody: “the spousal support award to respondent, the finding of marital waste, and the refusal to allow him to deduct his share of the cost of the children's extracurricular activities from his child support payment.” *Id.* The primary issues on appeal dealt with child custody.

In contrast, this case does not involve any actual issues with child custody. Rather, this matter involves numerous complex issues of

breach of contract and fraud, and the District Court's clear deviation from established Nevada law on the effect of one party breaching a contract first. *See* Appellant's Fast Track Statement, at 15-37. Indeed, there are seven issues raised in this appeal all dealing with Plaintiff's initial breach of the Marriage Settlement Agreement: (1) The District Court Committed Clear Error When It Found That A Valid Contract Existed Between The Parties; (2) The District Court Committed Clear Error When Ruling Plaintiff's Breach Of The MSA Was Not A Material Breach; (3) The District Court Erred When It Found Plaintiff Did Not Commit Fraud In The Inducement By Taking Defendant's Sole Property And Subsequently Signing The MSA; (4) The District Court Committed Clear Error When It Found That Defendant Waived His Right To Bring A Motion Pursuant To NRS 125.150(3); (5) The District Court Erred In Failing To Consider The Missing \$105,842.96 In Community Property Funds As "Missing" by Mistake or Fraud Pursuant To NRS 125.150; (6) The District Court Committed Clear Error When It Found That Defendant Failed To Prove That Plaintiff's Breach Of The MSA Made Defendant's Performance Impossible; and (7)

The Court Committed Clear Error When It Found That Plaintiff Was The Prevailing Party And Entitled To Attorney's Fees. *Id.*

These issues are too numerous and too complex to be addressed via the fast track program. In fact, the most issues this Court has ever resolved via the fast track program that Plaintiff could find *Edmands*, No. 58764, 2012 Nev. Unpub. LEXIS 1565, at *1. Appellant could not find a single divorce case involving entirely property and contract issues that was resolved through the fast track program. Indeed, as far as Appellant can tell when matters involve contract and property issues exclusively they appear to always be resolved via regular full briefing. *Grisham v. Grisham*, 128 Nev. 679, 681, 289 P.3d 230, 232 (2012); *Rivero v. Rivero*, 125 Nev. 410, 429 (2009); *Holyoak v. Holyoak*, 132 Nev. 980 (2016); *May v. Anderson*, 121 Nev. 668, 672 (2005). The length of the opinions themselves compared to the fast track opinions also indicate that issues like the ones raised in this case are too complex for resolution via the fast track program.

Further, it should be noted that resolution of this appeal via the fast track program will not resolve the appellate issues between the parties but may render Appellee's recent appeal moot. *See Hinds v.*

Mueller, Case No. 84077. In Appellee's recent appeal they challenge the denial of their attorney fees award for failure to submit the memorandum of fees and costs within the time period prescribed by the District Court. If this matter is resolved via in Appellant's favor via the fast track program that appeal will become moot. *Id.* On the other hand, if it not, Appellant will have been deprived full briefing on his complex appeal while Appellee's will be granted full briefing on their. To ensure fairness to the parties this case should be removed from the fast track program, consolidated with 84077, and set for full briefing. Appellant has discussed the implications of this request with undersigned counsel and seeks leave to remove this matter from the fast track program. *See Mueller Declaration*, at 1-2.

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CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court remove this matter from the fast track program and set it for full briefing. Appellant further requests that this appeal be consolidated with Case No. 84077.

Dated this 19th day of January 2022.

/s/ Michael J. Mcavaoyamaya

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of September 2021, the undersigned served the foregoing **MOTION FOR LEAVE TO REMOVE APPEAL FROM CHILD CUSTODY FAST TRACK PROGRAM AND CONSOLIDATE** on all counsel in the E-Service Master List for the above-referenced matter in the Nevada Supreme Court eFiling System in accordance with the Nevada Electronic Filing and Conversion Rules.

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Dated this 21st day of January, 2022.

/s/ Michael J. Mcavoyamaya

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7 **SUPREME COURT OF NEVADA**

8 **CRAIG MUELLER,**

9 Appellant,

CASE NO.: 83412

10 vs.

DECLARATION OF CRAIG MUELLER

11 **CHRISTINA HINDS,**

12 Appellee.

13 **CRAIG MUELLER, being first duly sworn, deposes and says:**

14 1. I have personal knowledge of the facts set forth herein.

15 2. This declaration is made pursuant to NRAP 3E(g)(2) as a certification and waiver
16 of expeditious resolution of the appeal.

17 3. I hereby waive expeditious resolution of this appeal via the child custody fast track
18 program and request that this Court direct full briefing of this appeal.

19 4. I have discussed the implications of removing this case from the fast track program
20 and directing full briefing and believe that given the number and complexity of the issues on
21 appeal full briefing is necessary.

22 5. Further, this matter only tangentially involves child custody issues to the extent I
23 am able to withdraw from the Marriage Settlement Agreement.

24 6. I swear under penalty of perjury that the above is true and correct to the best of my
25 knowledge.

26 Dated this 21 day of January, 2022.

27 
28 **CRAIG A. MUELLER**