

IN THE SUPREME COURT OF THE STATE OF NEVADA

CRAIG MUELLER,	)	No. 83412	Electronically Filed
Appellant,	)		Jan 24 2022 01:08 p.m.
Vs.	)	Related Dist. Court Case,	Elizabeth A. Brown
	)	8th Jud. Dist. Ct.	Clerk of Supreme Court
CHRISTINA HINDS.	)	Case No. D-18-571065-D	
	)	Dept. C	
Respondent,)		
	)	REPLY IN SUPPORT OF	
	)	MOTION FOR LEAVE TO	
	)	REMOVE APPEAL FROM	
	)	CHILD CUSTODY FAST	
	)	TRACK PROGRAM AND	
	)	CONSOLIDATE WITH	
	)	RELATED APPEAL	

Appellant files this Reply in Support of Motion For Leave to Remove this Appeal from the Child Custody Fast Track Program and Consolidate with Related Appeal. *See* NRAP 3E. Appellee has expressed no objection to consolidation of this appeal with the related appeal, Case No. 84077. *See* Appellee's Resp., at 1-3. Appellee has, however objected "to re-briefing the appeal that has already been fully briefed by both

sides.” *Id.* at 1. Appellee’s objection is misguided for several reasons. *See* NRAP 3E(g).

First, there does not appear to be a procedural mechanism contemplated in the Nevada Rules of Appellate Procedure to consolidate an appeal in the Child Custody Fast Track Program with an appeal that cannot be placed in the fast track program. The attorney’s fees appeal in Case No. 84077 cannot be placed in the child custody fast track program because the issues in that appeal do not involve child custody at all, even tangentially. Such appeals are subject to regular full briefing. *See* NRAP 3E(a). Indeed, NRAP 3E(a) provides that “This Rule applies to appeals and cross-appeals from district court orders pertaining to child custody or visitation.” *Id.* An appeal of an attorney’s fees order does not pertain in any way to child custody or visitation and as such, cannot be placed in the fast track program. *Id.* For this reason, Appellee’s request to resolve that appeal “under the briefing standards for Fast Track submissions” is without legal basis, and has never previously occurred.

Indeed, this Court has previously found challenges to an award of attorney’s fees to be separately appealable and not appropriate

resolution in the fast track program. *Routon v. Routon*, No. 59332, 2012 Nev. Unpub. LEXIS 1573, at *7-8 n.2 (Nov. 16, 2012) (holding that the attorney fees “matter is not properly before us on appeal. An order granting attorney fees is independently appealable as a special order made after a final judgment, see NRAP 3A(b)(8) (providing for appeals from special orders entered after a final judgment)”; *see also Smith v. Crown Financial Services*, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995) (noting that a post-judgment order awarding attorney fees is appealable as a special order after final judgment). Because an appeal of an order denying attorney’s fees is appropriate under NRAP 3A, it cannot be resolved via the NRAP 3E fast track program. *Id.*

Second, NRAP 3E(g)(1) provides that “[b]ased *solely upon review* of the transcripts or rough draft transcripts, fast track statement, fast track response, and any other documents filed with the court, the court may resolve the matter *or direct full briefing.*” *See* NRAP 3E(g)(1)(emphasis added). An appeal that is placed in the fast track program is not subject to being “fully briefed” because the fast track program does not permit full briefing of the appeal out of concern for

the need for expeditious resolution of child custody matters. Indeed, NRAP 3E(g)(2) expressly provides that:

A party may seek leave of the court to remove an appeal from the fast track program *and direct full briefing*. The motion must *demonstrate that the specific issues raised in the appeal are complex and/or too numerous for resolution in the fast track program*. If the moving party is represented by counsel, the movant must attach a written *waiver from the client certifying that counsel has discussed the implications of full briefing and that the client waives expeditious resolution of the appeal*.

See NRAP 3E(g)(2)(emphasis added).

The Child Custody Fast Track program is utilized in appeals involving child custody issues because of the need for expeditious resolution of such matters. *Id.* Indeed, the most common issue such appeals relate to that Appellant could find is cases involving the removal of children from the State of Nevada. *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. Because removal of children from the State can implicate significant parentage rights and the lives of the respective parents, the fast track program provides for expeditious resolution of such decisions without full briefing. *Id.*

It is not disputed that this appeal does not involve issues of child custody warranting expeditious resolution without full briefing. Indeed, Appellee previously filed their own notice to this Court arguing that “since child custody was not in issue in any way in the underlying case” other than the request to vacate the Decree, the need for filing a child custody fast track statement is “highly curious.” *See* Appellee’s Not. RE: Fast Track, at 1-2. Appellee disputes that “the issues involved in that appeal are particularly complex.” *See* Appellee’s Resp., at 2. However, Appellee does not elaborate on why she believes the issues in this appeal are not too “complex and/or too numerous for resolution in the fast track program.” *See* NRAP 3E(g)(2). The issue in resolving this

Motion is whether the issues in this case are too complex and/or too numerous to be resolved in the fast track program. *Id.*

Further, as Appellee agrees, in addition to the numerous issues on appeal in this case, Appellee has filed her own appeal in relation to the denial of their request for attorney's fees, which further complicates this appeal and adds issues for resolution between the parties. As noted in Appellant's Motion, Appellant was unable to find any similar case where so many non-child custody related issues involving complex matters of contract were resolved in the fast track program. Further, in addition to the seven issues on appeal in this case, Appellee will likely raise numerous additional issues in their appeal, which they do not oppose consolidating with this case.

The issues in this appeal were already too numerous, which Appellee did not dispute. Now it is undisputed that this case should be consolidated with Case No. 84077. Appellee's Motion to Reconsider, which is one of the orders Appellee has appealed in 84077, raised four issues that will likely also be raised in the 84077 appeal. Thus, upon the presumed consolidation of this case with 84077, there will be eleven (11) issues ripe for resolution. *Id.* The issues are simply too numerous for

resolution in the fast track program and Appellant maintains that the issues are too complex to resolve without full briefing.

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 24th day of January 2022.

/s/ Michael J. Mcavaoyamaya

MICHAEL J. MCAVOYAMAYA, ESQ.
Nevada Bar No.: 014082
1100 E. Bridger Ave.
Las Vegas NV, 89101
Mike@mrlawlv.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of September 2021, the undersigned served the foregoing **REPLY IN SUPPORT OF 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.

WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 2515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100
email@willicklawgroup.com
Attorneys for Plaintiff

Dated this 24th day of January, 2022.

/s/ Michael J. Mcavoyamaya

MICHAEL MCAVOYAMAYA, ESQ.
Nevada Bar No.: 014082
1100 E. Bridger
Las Vegas, NV, 89101
Telephone: (702) 299-5083
mike@mrlawlv.com
Attorney for Appellant