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Electronically Filed
Mar 02 2022 04:57 p.m.
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IN THE SUPREME COURT OF THE STATE OF NEVADA

YOAV EGOSI Appellant, vs. PATRICIA EGOSI, N/K/A PATRICIA LEE WOODS, Defendant.	**No.: 83454** District Court Case No.: D-16-540174-D

REPLY TO FAST TRACK RESPONSE

Did the district court commit legal error when it refused to allow Appellant the opportunity to present evidence and call witnesses, disproportionately allowing Respondent to present an extensive and lengthy case?

Respondent claims that because Appellant asked for a directed verdict that means he believed there was no need for him to present a case in chief and thus the district court could not have erred in denying him the right to be fully heard. This argument is nonsensical because there is no way for a litigant to know whether he must present a case in chief *until* the judge rules on a directed verdict motion. To argue that one presupposes the other ignores logic.

Respondent also argues Appellant put on his entire case in chief *and then* stated he "had 'enough testimony'" (Respondent's Fast Track Response (FTR) at 9)

but this mischaracterizes the proceedings. In fact, Appellant's counsel stated he had "got enough testimony" from Mr. Egosi as the witness presently on the stand, not for his entire case in chief. 18 JA 991. Although Respondent argued that Appellant "was given the same amount of trial time as [Respondent]," that is patently false. He was given one hour compared to Respondent's five hours. This is not the same amount of time.

Respondent also states Appellant "never made a record that he did not have enough time" yet ignores the fact Appellant's counsel alerted the judge "we have an hour to go, and we haven't even put our case on yet." The judge's only response was to cut him off saying, "Well, let's get going." 18 JA 954. Initially, as Respondent noted with her citation to Nevada Code of Judicial Conduct 3A(4), it is the *judge's* responsibility to ensure every person has a full right to be heard, not the party's responsibility. The judge controls the proceedings, not the parties. Further, despite the alleged failure to make a record, the record exists showing a grossly disproportionate time difference, and the inability for Appellant to call any witnesses besides himself, despite having notified the court of many other witnesses he intended to call. Moreover, this is a Constitutional violation that is reviewed *de novo*. *Rico v. Rodriguez*, 121 Nev. 695, 702 (2005).

Therefore, the court should find Appellant was denied the right to be heard in a meaningful manner and reverse the findings.

Did the district court commit legal error and abuse its discretion by sanctioning Appellant for delays that included time the proceedings were stayed pending appeal to this Court?

Just as the district court did, Respondent wholly ignores that the vast majority of the time Appellant is accused of delaying the business evaluation was *due to his appeal* of the underlying order to this court. The district court even stated the issue was mooted due to the appeal. 14 JA 547-48.

Instead of focusing on the legal issue, Respondent attempts to distract the court by alleging Appellant never completed the business valuation. She states, "The district court ordered Yoav to complete the business valuation…[i]t was never done." FTR 10. *This is false.* Appellant used every effort to complete the business valuation. After this court denied his appeal, he paid $3,500 to Anthem Forensics months before the trial, but Anthem had increased their retainer requirement and no longer wished to participate. 15 JA 631 (fn 62), 19 JA 1034. Appellant then hired another forensic expert who he paid for entirely himself and offered that evidence at trial, but the judge excluded it due to his own conflict of interest (see below)[1]. Respondent's allegations are, thus, false.

1 The decree ordered Appellant to pay $10,000 for yet another forensic expert,15 JA 631, which Appellant has already complied with.

Appellant should not suffer sanctions for not complying with an order that he appealed to this court and which was rendered moot during the appeal. This court should reverse the sanctions.

Did the district court abuse its discretion or commit legal error when it applied the change of circumstances standard to the circumstances of the parent instead of the circumstances of the child?

Respondent argues "changed circumstance – even with regard to a parent – affects the welfare of the child." FTR 11. Respondent cites to *Maurice v. Maurice*, 2022 WL 214014 (Ct. App. Nev. 2022), an unpublished decision from the Court of Appeals of Nevada which "may not be cited in any Nevada court for any purpose." NRAP Rule 36. Therefore, the court must reject this argument.

Further, Respondent cited to "incredibly specific findings showing how the circumstances had substantially changed" which are all personal to Patricia and then asks the court to accept her summary conclusion that they "certainly affected [the child's] welfare" without so much as an explanation of how they affected his welfare.

Without specific findings regarding the child's welfare, the court cannot uphold this finding. Nevada law is clear that the primary concern is the *stability* of the child, not the parent's circumstances. As stated in *Ellis v. Carucci,* 123 Nev. 145 (2007), the court specifically disavowed a standard that "improperly focuses on the

circumstances of the parents and not the child" because the purpose is "guaranteeing stability" for the child. Here, the court made no factual findings *regarding the welfare of the child* despite being required to do so to warrant upending the guaranteed stability he was then-enjoying with Appellant. Indeed, the court made factual findings that the child was flourishing with the father and no rationale existed for disturbing that arrangement.

Because there were no factual findings regarding a change in the child's circumstances as required by *Rivero v. Rivero*, 125 Nev. 410 (2009), this court should reverse the child custody determination.

Did the district court abuse its discretion when it considered evidence the predated the last custody order to make a new custody determination?

Respondent claims Appellant did not cite to any specific areas of the judge's decree that were objectionable in his consideration of the stale Dr. Paglini report. Appellant's argument is that the law prohibits the court relying on evidence that predates the prior custody order unless it was previously unknown to the parties. *See* Fast Track Statement at 11 discussing *Castle v. Simmons*, 120 Nev. 98, 103-06 (2004). Therefore, he need not identify specific objectionable findings where there is a clear legal error in relying on the evidence. The district court relied on Dr. Paglini's report in its evaluation of almost every element of the best interest factors. *See* 15 JA 616-619. The entirety of the custody determination, therefore, is at issue.

Respondent's Statement that "Dr. Paglini's report specifically stated that the parties' marriage and lifestyle significantly contributed to Patricia's drug use and mental and emotional state," is both false and lacks a citation. Respondent's and the district court's statement that Dr. Paglini found the parties' marriage and lifestyle contributed to Patricia's drug use misstates the record. Dr. Paglini actually said: "She claims she consumed drugs as a method of being able to tolerate Mr. Egosi…yet her drug usage (primarily cocaine) preceded Mr. Egosi by numerous years." 16 JA 705. Further, "Her life stabilized with Mr. Egosi for she no longer needed to prostitute herself, yet she continued her drug use." 16 JA 706. Strikingly, the judge, using what appears to be his own knowledge while simultaneously citing this outdated report, came to the *opposite* conclusion and said Appellant was responsible for Respondent's drug use - an arbitrary and capricious findings.

For the district court to make such conclusions, a current evaluation must be performed. The legal conclusions based an evaluation that is half a decade old is an abuse of discretion.

Did the district court abuse its discretion or commit legal error in its understanding and application of Georgia law concerning prenuptial agreements and in its exercise of equity jurisdiction?

The only discernable rationale for the district court's equitable modification of the prenuptial agreement is that it somehow found unconscionable that Appellant

started a business after marriage and unfair that the prenuptial agreement applied to that business. 15 JA 584. This, however, is something prenuptial agreements routinely address. A prenuptial agreement that merely protect assets that predate marriage would be an exercise in futility because those assets are already separate property. Thus, to the extent the court found it unconscionable or unfair that the parties' agreement rendered Appellant's post-marriage business separate property means no prenuptial agreement could ever serve any actual legal purpose. Even if the district court believed the prenuptial agreement to be unconscionable, it does not clearly state why.

Also, it is nonsensical to conclude that forming a new business was a change beyond the parties' contemplation when the agreement was executed where the agreement states in its terms that it applies to businesses formed after marriage. 2 JA 15. It cannot logically be beyond contemplation when it is expressed in the terms of the agreement itself.

Did the district court err or abuse its discretion by modifying the prenuptial agreement instead of accepting it in whole or invalidating it entirely?

Georgia law requires mutual mistake or fraud to alter the agreement, something not present here and Respondent did not point to any. FTS at 18. The district court merged legal concepts of determining the agreement's validity with the power to modify agreements, appearing to conclude that it had the power to modify

the agreement to make it comport with what the district court thought it should have said. This power, however, does not exist in *Alexander v. Alexander*, 279 Ga. 116 (Ga., 2005) or any other Georgia case, absent fraud or mutual mistake.

Did the district court err or abuse its discretion when it sua sponte clarified its prior decision regarding the prenuptial agreement's validity?

Although Respondent claims the November 2017 order was merely a routine order following the case management conference, that ignores the order's own words that it was "for the limited purpose of clarifying this Court's findings and conclusions" after "this Court's review of the June 14, 2017, videotape record." 6 JA 431. The judge recognized he said a business evaluation was not necessary, then post hoc added to that his statement did not apply to businesses not mentioned in the prenuptial agreement by adding in the November 2017 order: "This finding would not apply to business entities created thereafter." *Id.* at 432. This is in contradiction to the terms of the prenuptial agreement that specifically states: "Unless a particular piece of property is explicitly documented as being owned by both parties, the following types of property will not be deemed as shared property…any property owned by a party after the date of execution." 2 JA 16.

Had this been clear during the hearing, Appellant obviously would have disputed it because he consistently held throughout the proceedings that his business formed after marriage was protected by the agreement. Thus, the judge's November

2017 sua sponte clarification is not harmless legal error and it is not routine because its very verbiage altered the holding.

Did the district court commit legal error or abuse its discretion when it shifted the burden to Appellant to prove his business was separate property where it previously placed the burden on Respondent to prove it was community property?

In the May 2021 evidentiary hearing, Appellant's pointed out to the district court that the burden had shifted from Respondent to the Appellant: "So your prior order specifically put the burden on them to prove that, to trace it, and demonstrate that JoiBiz has value and that it belongs to the community…the burden has shifted to the Plaintiff to demonstrate that point." 19 JA 1019. The judge said he would take the matter under advisement. 19 JA 1023. Instead of addressing it, the decree merely disposed of it in a non-substantive footnote. 15 JA 625.

Per the prenuptial agreement, Respondent must prove the community nature of the post-marital business and the court inappropriately shifted the burden to Appellant. *See* 2 JA 17.

Did the district court commit legal error and abuse its discretion when it excluded Appellant's financial forensic expert's report because the judge believed he had a conflict of interest?

Respondent again attempts to shift the court's focus from the legal issue to accusing Appellant of not noticing the financial expert. Both she and the court were made aware of the expert's name, report and existence. 19 JA 1158 ("This was

disclosed to Ms. Connolly in January after it was generated[2]. It was then filed actually in April, and attached to our motion for a protective order[3] Mr. Slade was noticed as a witness. And subsequent, it's in the exhibits, it was again noticed to her on Thursday."). Regardless, the court did not exclude the testimony because of improper notice – he excluded it because the judge was *biased*.

The court must apply conflict of interest law, not review trial procedure error. The burden is on the judge per NRS 1.230, not the parties, to ensure a conflict-free trial. Again, the judge is in control of the proceedings, not the parties, and the judge must act ethically regardless of whether the parties make motions for him to fulfill his ethical duties.

CONCLUSION

Based on the nature and type legal errors committed by the district court and the abuses of discretion Appellant has been subjected to throughout the proceedings, this Court should reverse the custody determination, reverse the court's findings and conclusions regarding the prenuptial agreement, and reverse the sanctions levied by the district court.

If the court remands this case for further proceedings, Appellant respectfully requests that the court order that the case be reassigned to another district court

2 Eighth Judicial District Court Efile *Envelope Number 7277005*.

3 "DEFENDANT'S COMBINED MOTION FOR PROTECTIVE ORDERS" filed on April 13, 2021.

judge as the judge has already expressed his intention to retaliate against the parties if additional court actions are required. *See* 14 JA 575 (fn 1).

VERIFICATION

1. I hereby certify that this reply complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP(a)(6) because:
    - This fast track statement has been prepared in proportionally spaced typeface using Microsoft Word 365 in Times New Roman size 14.
2. I further certify that this fast track statement complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is:
    - Proportionately spaced, has a typeface of 14 points or more, and contains 2,276 words.
3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely reply and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely reply, or failing to raise material issues or arguments in the reply, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information and belief.

Dated this 1st day of March, 2022.

/s/ Aniela K. Szymanski
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of March 2022, I served a true and correct copy of the foregoing ***Reply to Fast Track Response***, via eFiling service to:

Patricia Egosi, n/k/a Patricia Lee Woods c/o EMILY McFARLING, ESQ. and AMY PORRAY McFARLING LAW GROUP	Patricia Egosi, n/k/a Patricia Lee Woods c/o JENNIFER ISSO, ESQ. THE ISSO & HUGHES LAW FIRM

DATED this the 1st day of March, 2022.

Submitted By: /S/Aniela K. Szymanski
ANIELA K. SZYMANSKI