

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS ALBERT }
CASS, Appellant } No. 83297
 }
 }
CHRISTA ROSE }
 }
CLASSON,
Respondent } Dist. Court Case No. D554355

FILED

AUG 23 2021

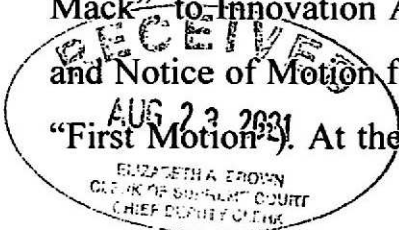
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E. Richard*
DEPUTY CLERK

FAST TRACK RESPONSE

1. Name of party filing this fast track response: Christa R. Classon
2. Name, law firm, address, and telephone number of attorney submitting this fast track response: Self-represented, 2335 Weyburn Court, Henderson, NV 89074, 702-581-7655
3. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel: N/A
4. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues raised in this appeal: N/A
5. Procedural history. Briefly describe the procedural history of the case only if dissatisfied with the history set forth in the fast track statement:

On July 20, 2020, Appellant Thomas Albert Cass ("Appellant") moved the district court for the first time to remove the parties' child, Kendall Cass ("Kendall"), from his elementary school, Nate Mack Elementary School ("Nate Mack") to Innovation Academy, a private Montessori school. *See generally* Motion and Notice of Motion for School Selection for Minor Child, dated July 20, 2020 (the "First Motion"). At the time of the First Motion, Appellant lived at 358 Jorge Way

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Henderson, NV 89014, which is his mother's residence, and which is 1.5 miles from Nate Mack. *Id.* Appellant sought to place Kendall in Innovation Academy temporarily, with plans to apply for admission and tuition assistance at Alexander Dawson and/or the Meadows School, neither of which ever occurred. *Id.* Appellant sought to have the parties split private school tuition, even though both parties applied for and were permitted to proceed *in forma pauperis*. *Id.*; see also Orders to Proceed in Forma Pauperis, dated August 12, 2020. Appellee Christa Classon ("Christa") opposed the First Motion based on several factors including, but not limited to: (1) Kendall's need for consistency over being placed in his third school in three years (with the potential for a fourth, if Appellant sought to place him in Alexander Dawson or the Meadows in the future); (2) the adequacy of instruction at Nate Mack, which is one of the highest-rated public elementary schools in the State; (3) the fact that Montessori education is largely self-instruction and that Kendall needed structured guidance after going through partial online learning for First Grade; (4) Kendall's success at Nate Mack, including his student of the month award (he has since won a school-wide award for most reading last year, due in large part to Appellant submitting that Kendall read all seven Harry Potter books while under his supervision); and (5) that Nate Mack has certain STEAM programs, like a robotics club, that would provide Kendall extracurricular opportunities similar to the STEM program offered at Innovation Academy. See Opposition to Motion for School Selection for Minor Child and Countermotion, dated August 6, 2020.

On September 9, 2020, the district court heard the First Motion. See Minutes from September 9, 2020. After reviewing the parties' motions, the district court ordered that Kendall was to stay enrolled at Nate Mack, and that an evidentiary hearing would be set for February 26, 2021, to determine a future school. *Id.* The district court also ordered the parties to file a pre-trial memorandum. *Id.* Finally, the district court ordered Appellant to file an order from the September 9, 2020, hearing. *Id.* Appellant never filed the required order or a pre-trial memorandum.

On February 25, 2021, Christa filed her pre-trial memorandum stating that she

and Appellant agreed at that time to have Kendall attend “a STEM charter school located near Water Street in Henderson, Nevada.” Pre-Trial Memorandum, dated February 25, 2021. Christa also stated that she did not stipulate to any other school and would prefer that Kendall return to Nate Mack if the STEM school on Water Street did not accept Kendall. *Id.* Christa also submitted a proposed order to the district court on that same date due to Appellant’s failure to submit an order as ordered by the court. The district court signed Christa’s proposed order, which was consistent with the court’s order from the hearing as evidenced by the minute order on September 9, 2020. *See* Minutes from September 9, 2020; Order dated February 25, 2021.

On February 26, 2021, the district court held the evidentiary hearing. At the hearing, Appellant mentioned—for the first time—that the “STEM charter school” he was attempting to enroll Kendall at was McCaw STEAM Academy (“McCaw”) which is a Clark County School District magnet school and not a charter school.¹ Appellant inferred at that hearing that Kendall was already enrolled at McCaw, but that he would also enroll Kendall at Legacy Traditional School Cadence (“Legacy Cadence”), a charter school located near Water Street in Henderson, Nevada, as a back-up school. Based on Appellant’s representations to the district court, which later turned out to be false, Christa agreed to have Kendall attend McCaw and/or Legacy Cadence **only**. *See* Minutes from February 26, 2021. Appellant was ordered to prepare the proposed order. *Id.* Again, Appellant failed to file an appropriate order, delaying the resolution of his motions and leading to confusion on the district court’s docket, because final orders and notices of entry of those orders never occurred.

Instead of filing the order as required, Appellant filed a motion for order to show cause alleging that Christa removed Appellant from her health insurance during the parties’ divorce proceedings three years prior without any evidence to

¹ Appellee does not have the transcript records from this hearing to cite to the record. If this Court requests those records as part of its review, Appellee respectfully asks permission to amend her response to include proper citations to the record.

support his motion. *See* Motion for Order to Show Case, dated March 24, 2021 (the “Second Motion”). At the time Appellant filed the Second Motion, he was at a second residence that he failed to use on his Second Motion. Christa opposed the Second Motion on April 7, 2021, by providing a record of insurance demonstrating that Appellant’s motion was without merit (and, by extension, that Appellant’s sworn declaration was filed under false pretenses). *See* Opposition to Motion for Order to Show Cause Regarding Contempt, dated April 7, 2021. The Court denied the motion and ordered the case closed. *See* Minutes from May 6, 2021.

Unsatisfied with the results of his First Motion and Second Motion, Appellant moved the district court to select Kendall’s school a third time (although the Second Motion was not for school selection, the district court’s two hearings on September 9, 2020 and February 26, 2021 both involved Appellant’s attempts to select different schools). *See* Motion for School Selection for Minor Child and Claiming on Taxes, dated June 22, 2021 (the “Third Motion”). Appellant’s Third Motion falsely claimed that “The Court ordered that Kendall Cass was to attend a STEM magnet program or an Accelerated Program at a Charter school” as the primary basis to support the Third Motion. *Id.*; *compare* Minutes from February 26, 2021 (stating that the parties stipulated to “a STEM SCHOOL” and not just any “Accelerated Program at a Charter school”).² As Appellant admitted in his Third Motion, Kendall was denied admission as both McCaw and Legacy Cadence despite his earlier representations that Kendall was accepted to both programs. *See* Third Motion p. 3. Appellant’s only other argument was that a ***third school in three motions*** would better serve Kendall’s best interests because that third school—Legacy North Valley—was closer to his residence. *Id.* Coincidentally, Appellant’s third attempt to move Kendall’s school coincided with his ***third residential address in five months***. *Id.* (showing a Yellow Rose address, which Appellant claims her “purchased” but county property records show the property address are in a different name). Christa opposed the Third Motion by arguing that it was in Kendall’s best interest to remain

² Based on the transcript, this Court will be able to see that Appellee did not agree to a broad category of schools, and the McCaw and Legacy Cadence were the only named schools other than Nate Mack.

at Nate Mack due to the following factors: (1) Kendall needed consistency, noting that Appellant has moved several times since the parties' divorce; (2) Kendall's performance at Nate Mack—a highly rated public school—was strong and noting that Nate Mack has STEAM and robotics clubs available to students;³ (3) that sending Kendall to a charter school 22 miles from his current school would isolate her from Kendall because she works full time and would not be able to drive Kendall on her weeks; and (4) that the Third Motion was the third school Appellant was seeking to move Kendall to in the preceding 5 months; and (5) that accelerated learning may hurt Kendall's progress because he is already "behind" due, in part, to the pandemic and remote learning. *See* Opposition to Motion for School Selection for Minor Child and Countermotion.

On July 22, 2021, the district court heard the Third Motion. *See* Minutes from July 22, 2021. After reviewing the parties' motions, and knowing Appellant's history of filing three motions in eight months seeking different schools at each request, the district court found that Appellant's decision to move 22 miles from his son's school was not in Kendall's best interest and denied the Third Motion. *Id.* The district court also noted that Appellant had Kendall present at the hearing after an instruction to remove him from the hearing. *Id.* The district court's order further explained that it reviewed Appellant's prior attempts to move schools and Appellant's decision to make several moves not being in Kendall's best interest. *See* Order dated July 23, 2021 (July 22, 2021 Hearing). Appellant appealed.

6. Statement of facts. Briefly set forth the facts material to the issues on appeal only if dissatisfied with the statement set forth in the fast track statement (provide citations for every assertion of fact to the appendix, if any, or to the rough draft transcript):

Appellant's statement of "facts" is nothing more than a self-serving and

³ Appellant has misled

inaccurate argument. The following facts are corrected by evidence and not simple assertion: (1) Christa never argued that she wanted Kendall “to attend a public school near her parents’ house”—Christa consistently argued that Kendall’s best interest was served through consistency by keeping him at Nate Mack;⁴ (2) the district court never found that it was in Kendall’s “best interest to attend the STEM or charter school”—it noted on the record that the parties *stipulated* to McCaw and Legacy Cadence as the specific schools of the agreement. The district court never made a finding of Kendall’s best interest at the February 26, 2021, hearing; (3) Appellant never filed an order from February 26, 2021, or requested that Christa sign an order—the court docket is void of any filing made by Appellant supporting this contention; (4) Appellant is misreading the docket by claiming that Christa “fraudulently” filed an order on February 25, 2021—that order was from the First Motion heard in September 2020. Christa only filed that *proposed* order to keep the docket in order before the evidentiary hearing. This Court can see the minute order from September 9, 2020, and see that Appellant never filed the order as required. It can also see that Christa’s February 25, 2021 order (signed by the district court) is consistent with the minute orders from the district court’s ruling in September 2020 (under a different judge). Put in simple terms, the February 25, 2021 order has nothing to do with the pre-trial evidentiary hearing or the Third Motion and was simply a *correct* filing that Kendall was ordered to remain at Nate Mack the prior year (which, was already 2/3 of the way completed by the time of the purported “fraudulent” filing); (5) Appellant claims that he “purchased” his current residence. However, the Clark County Assessor’s records for his listed address on this appeal shows the property belongs to a trust that is not in his name, and Appellant has provided no other evidence at the district court level to prove ownership (in reality, he lives with his brother-in-law’s home); and (6) Nate Mack does have both robotics and STEAM clubs, which can be found by going here:

<https://sites.google.com/nv.ccsd.net/natemack/nate-mack-clubs-teams>. A simple

⁴ See Oppositions to the First Motion and Third Motion; see also Pre-trial Memorandum.

Google search would reveal that the district court was accurate in that finding—something Appellant clearly did not do before filing his appeal.

7. Issues on appeal. State concisely your response to the principal issue(s) in this appeal: The district court told us at the hearing that she reviewed not only the Third Motion subject of this appeal, but also the prior motions by Appellant to move schools. She considered the arguments of the parties and determined it was not in Kendall's best interest to move schools due, in large part, to Appellant continually moving and seeking to move him to a school near his new residence simply because it was closer to him. In short, the district court appropriately considered several factors to consider Kendall's best interest and determined it was in the *child's* best interest to not require him to attend a third school in four years (not counting the year and a half Kendall was learning remotely).

8. Legal argument, including authorities:

A district court must hold an evidentiary hearing on a request to modify custodial orders if the moving party demonstrates "adequate cause."² *Arcella v. Arcella*, 133 Nev. 868, 871, 407 P.3d 341, 345 (2017) (citing *Rooney v. Rooney*, 109 Nev. 540, 542, 853 P.2d 123, 124 (1993)). "Adequate cause arises where the moving party presents a prima facie case" that the requested relief is in the child's best interest. *Id.* (citations omitted). To demonstrate a prima facie case, a movant must show that "(1) the facts alleged in the affidavits are relevant to the [relief requested]; and (2) the evidence is not merely cumulative or impeaching." *Id.* (same). Appellant never demonstrated "adequate cause" for a full evidentiary hearing, because it was clear on the face of the Third Motion (and given his filing history) that his only concern was convenience and not what was in the child's best interest.

District courts have wide discretion to determine issues of child custody. *Id.* (citing *Sims v. Sims*, 109 Nev. 1146, 1148 (1993)). The district court must tie the child's best interest into the order. *Id.* (citation omitted). The *Arcella* decision by this

Court also listed the factors to consider to determine the “best interests” of the child. *Id.* Those are; (1) The wishes of the child, to the extent that the child is of sufficient age and capacity to form an intelligent preference; (2) The child's educational needs and each school's ability to meet them; (3) The curriculum, method of teaching, and quality of instruction at each school; (4) The child's past scholastic achievement and predicted performance at each school; (5) The child's medical needs and each school's ability to meet them; (6) The child's extracurricular interests and each school's ability to satisfy them; (7) Whether leaving the child's current school would disrupt the child's academic progress; (8) The child's ability to adapt to an unfamiliar environment; (9) The length of commute to each school and other logistical concerns; (10) Whether enrolling the child at a school is likely to alienate the child from a parent.


The Third Motion and opposition to the Third Motion illustrate *why* the district court concluded as it did and why it denied the motion. Appellant’s Third Motion simply argued that it was closer to his house and that charter schools—generally—are “better” than public schools. *See* Third Motion. Christa’s opposition to the Third Motion provided arguments as to why each of the *Arcella* factors weighed in her favor, which the district court considered in deciding to deny the Third Motion. *See* Order dated July 23, 2021. Appellant should be barred from raising new arguments on appeal. *King v. Miller*, 128 Nev. 911 (2012) (citation omitted). Thus, Appellant’s arguments that the district court did not consider certain factors—factors that Appellant never even attempted to demonstrate in the Third Motion or at the hearing—should not be considered. Finally, because the district court’s order is supported by substantial evidence in the record, including the First Motion and subsequent papers/orders, the evidentiary hearing and pre-trial memorandum, and the Third Motion and subsequent papers/orders, this Court should affirm the district court’s July 2021 order and dismiss this appeal.

9. Preservation of issues. State concisely your response to appellant's position concerning the preservation of issues on appeal: None.

VERIFICATION

I hereby certify that the information provided in this fast track statement is true and complete to the best of my knowledge, information, and belief. I also recognize that I am responsible for filing this fast track statement and that this fast track statement conforms to the type-face and size requirements set forth in the NRAP.

Dated this 18th day of August, 2021

X 

Christa R. Classon