

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA MYERS

Appellant,

vs.

CALEB HASKINS,

Respondent,

) Supreme Court No. 83576

) District Court Case No. D-10-45495-C

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Feb 14 2022 10:17 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

REPLY TO FAST TRACK RESPONSE

Appellant replies to Respondent’s Fast Track Response and reasserts the fact that evidence of numerous changes in circumstances occurred in this matter such that an evidentiary hearing is warranted.

1. The Issue on Appeal: Whether the District Court Judge erred in denial of an Evidentiary Hearing but Appellant regarding a request to modify custody of daughter, Sydney.

2. Reply to Fast Track: Appellant believes it would be amiss not to address the child’s age in this matter. The parties were divorced in 2010, when the child was 2 ½ years old.

Respondent relocated with the child to Oregon in 2/2014, when the child was less than four (4) years old.

The child will be twelve (12) years old on 3/30/22 - before the Decision is made in this matter. In that regard, there have been significant changes in circumstances over the past eight (8) years that warrant an evidentiary hearing for the issue of custody.

Appellant has expressed concerns regarding living arrangements and behaviors at Respondent's residence, not only as presented to her by the minor child, but also eyewitness testimony of others with intimate knowledge of the living situation. These numerous changes in circumstances have transpired since the entry of the 2010 Decree of Divorce and 2014 relocation order.

In fact, since the last custody order Respondent divorced and remarried. Respondent also lives with his present wife and her teenage boys . Apparently, there is conflict with respect to this situation that has affected the minor child. For example, there is not enough space for the child and she has been forced to sleep on the floor of her new stepmother's craft room, as well as other issues that would have been presented if an evidentiary hearing had been granted.

The child is having anxiety that is apparently not being addressed by Respondent due to the ongoing conflict in the household.

Evidence of what occurred in Respondent's residence, and how the child feels when she is almost twelve (12) years old, is valid, and should be validated.

The child is struggling with her current reality while living at Respondent's residence.

Appellant submits that she presented a prima facie case, and there are significant changes in circumstances pursuant to *Ellis v. Carucci*, 161 P.3d 239 that have been presented to warrant a review and modification of custody at an evidentiary hearing.

There has been adequate cause demonstrated pursuant to *Rooney v. Rooney*, 109 Nev. 540 (1993), 853 P.3d 123. "Adequate cause arises where the moving party presents a prima facie case for modification." *Id.* at 543, 853 P.2d at 125 (internal quotation marks omitted). To make a prima facie case, the moving party must show that "(1) the facts alleged in the affidavits are relevant to the grounds for modification; and (2) the evidence is not merely cumulative or impeaching." *Id.*

The evidence submitted in the affidavits are relevant to the grounds for an evidentiary hearing for modification; and the evidence is not merely cumulative or impeaching. It is more than hearsay and had an evidentiary hearing been granted, there are witnesses with first hand knowledge that would have provided testimony. In sum, there are a significant changes in circumstances that are adequate to warrant a modification of custody had the District Court heard the matter.

It has long been established that custody cannot be used as a tool to punish a parent, and Appellant believes with the judge saying this is ‘ever so close’, that her prior appeals of this matter may have had a role in the decision not to interview the child, and not to proceed with an evidentiary hearing.

CONCLUSION

Based upon the facts and history in this matter there is more than a prima facia case for hearing. It is appropriate that the Court acknowledge the significant changes in circumstances, and it is in the best interest of the child that an evidentiary hearing be held.

Dated this 11th day of February, 2022.

PATRICIA A. MARR, LLC

/s/Patricia A. Marr, Esq.

PATRICIA A. MARR, ESQ.
Patricia A. Marr, LLC
2470 St. Rose Parkway, Ste 110
Henderson, NV 89074
(702) 353-4225
Attorney for Appellant

VERIFICATION

1. I hereby certify that this fast track 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 32(a)(6) because:

2. I further certify that this fast track reply complies with the page- or type-volume limitations of NRAP 3E(3)(2) because it has been prepared in a proportionally spaced typeface using WordPerfect in 14 font size and name of type style New Times Roman.

3. I further certify that this fast track response complies with the page-or type -volume limitations of NRAP 3E(e)(2) because it is proportionately spaced, has a typeface of 14 points or more, and contains 694 words.

4. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track reply and that the Supreme Court of Nevada may impose sanctions for filing to timely file a fast track response, or failing to raise material

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issues or arguments in the fast track reply. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this 11th day of February, 2022.

PATRICIA A. MARR, LLC

/s/Patricia A. Marr, Esq.

PATRICIA A. MARR, ESQ.
Patricia A. Marr, LLC
2470 St. Rose Parkway, Ste 110
Henderson, NV 89074
(702) 353-4225
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed child custody fast track response statement upon all parties to the appeal as follows:

By mailing it first class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

CALEB HASKINS
340 N. 16th Lane
Phulomath, Oregon 97370

DATED this 14th day of February, 2022.

PATRICIA A. MARR, LLC

/s/Patricia A. Marr, Esq.

PATRICIA A. MARR, ESQ.
Patricia A. Marr, LLC
2470 St. Rose Parkway, Ste 110
Henderson, NV 89074
(702) 353-4225
Attorney for Appellant