

**IN THE SUPREME COURT OF
THE STATE OF NEVADA**

Electronically Filed
Nov 12 2020 03:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

CHRISTINA CALDERON,

Appellant,

MITCHELL STIPP;

Respondent.

Supreme Court Case No.: 81888

District Case No.: D-08-389203-Z

**RESPONSE TO DOCKETING
STATEMENT**

Respondent, Mitchell Stipp, Esq., of the Law Office of Mitchell Stipp, hereby files his response to the Docketing Statement filed by Appellant, Christina Calderon (Dkt. 20-40260), in accordance with NRAP 14(f).

DATED this 12th day of November, 2020.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp, Esq.

MITCHELL STIPP, ESQ.

Nevada Bar No. 7531

LAW OFFICE OF MITCHELL STIPP

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Las Vegas, Nevada 89144

Telephone: 702.602.1242

mstipp@stiplaw.com

Attorneys for Respondent, Mitchell Stipp

The Docketing Statement filed by Appellant fails to comply with NRC 14(c). Appellant's responses to Questions 22 and 26 are incomplete. Attached as **Exhibit A** is a true and accurate copy of the docket entries in the district court case showing the filings by the parties relevant to the matters on appeal. Filings commenced on or about August 26, 2019 and ended with the decision by the court on September 17, 2020, which is attached hereto as **Exhibit B**. Appellant failed to provide any response to Question 22. Further, Appellant included only six (6) of the filings detailed in Exhibit A. For a more detailed description of the matters before the district court, Respondent hereby attaches his closing brief before the district court as **Exhibit C**.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of November, 2020, I filed the foregoing using the Nevada Supreme Court's E-filing system, which provided notice to the e-service participants registered in this case:

Aaron Grigsby, Attorney for Christina Calderon (Appellant)

Lansford Leavitt, Settlement Judge

By: */s/ Amy Hernandez*

An employee of the Law Office of Mitchell Stipp

EXHIBIT A

08/26/2019 Minute Order ▼

Minute Order

Judicial Officer

Forsberg, Rhonda K.

Hearing Time

7:30 AM

Result

Minute Order - No Hearing Held

08/26/2019 Motion ▼

Motion - MOT (FAM)

Comment

Motion for Child Interview by FMC, Mediation and to Permit Children to Exercise Teenage Discretion on Timeshare

08/26/2019 Exhibits ▼

Exhibits - EXHS (FAM)

Comment

Exhibits in Support of Defendant's Motion for Child Interview by FMC, Mediation and to Permit Children to Exercise Teenage

Discretion on Timeshare

08/26/2019 Notice of Hearing ▼

Notice of Hearing - NOH (FAM)

Comment

Notice of Hearing

08/26/2019 Ex Parte Application for Order ▼

Ex Parte Application for Order - EPAO (FAM)

Comment

Ex Parte Application for Order Shortening Time and Related Relief

08/26/2019 Notice of Department Reassignment ▼

Notice of Department Reassignment

Comment

Notice of Department Reassignment

08/27/2019 Notice of Appearance ▼

Notice of Appearance - NOA (FAM)

Comment

Notice of Appearance of Counsel for Plaintiff

08/29/2019 Motion for Order to Show Cause ▼

Motion for Order to Show Cause - MOSC (FAM)

Comment

Plaintiff's Motion for Order to Show Cause Against the Defendant for Willfully Disobeying the Custody Order; a Request for Immediate Return of the Children, Make up Visitation and an Award of Attorney's Fees

08/29/2019 Notice ▼

Notice - NOTC (FAM)

Comment

Notice of Communications between Defendant and Plaintiff's Attorney

08/30/2019 Notice of Hearing ▼

Notice of Hearing - NOH (FAM)

Comment

Notice of Hearing

08/30/2019 Application ▼

Application - APPL (FAM)

Comment

Ex Parte Application for an Order to Show Cause (EDCR 5.509)

08/30/2019 Exhibits ▼

Exhibits - EXHS (FAM)

Comment

Plaintiff s Exhibits in Support of Plaintiff s Motion for Order to Show Cause Against the Defendant for Willfully Disobeying the Custody Order; a Request for Immediate Return of the Children, Make up Visitation and an Award of Attorney's Fees

08/30/2019 Objection ▼

Objection - OBJ (FAM)

Comment

Plaintiff's Objection to Exhibits Improperly Cut and Pasted Within Defendant's Motion for Child Interview by FMC, Mediation and to Permit Children to Exercise Teenage Discretion on Timeshare, and Objection to Exhibits in Support of Defendant's Motion Filed on August 26, 2019, Pursuant to NRCPC 16.205(i)

09/04/2019 Application ▼

Application - APPL (FAM)

Comment

Ex Parte Application for Order Shortening Time

09/04/2019 Opposition and Countermotion ▼

Opposition and Countermotion - OPPC (FAM)

Comment

DEFENDANT S OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE, REQUEST FOR IMMEDIATE RETURN OF THE CHILDREN, MAKEUP VISITATION AND AWARD OF ATTORNEY S FEES AND COUNTERMOTION FOR INTERVIEW OF CHILDREN BY FMC, MEDIATION AT FMC, AND FOR CHILDREN TO EXERCISE TEENAGE DISCRETION

09/04/2019 Exhibits ▼

Exhibits - EXHS (FAM)

Comment

Defendant's Exhibits in Support of Opposition to Motion for Order to Show Cause, Request For Immediate Return of the Children, Makeup Visitation And Award of Attorney's Fees And Countermotion for Interview of Children By FMC, Mediation At FMC, And for Children to Exercise Teenage Discretion

09/05/2019 Order to Show Cause ▼

Order to Show Cause - OSC (FAM)

Comment

Order to Show Cause

09/05/2019 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (FAM)

Comment

Notice of Entry of Order

09/06/2019 Declaration ▼

Declaration - DECL (FAM)

Comment

DECLARATION OF AMY STIPP IN SUPPORT OF DEFENDANT S MOTION FOR CHILD INTERVIEW BY FMC, MEDIATION AND TO PERMIT CHILDREN TO EXERCISE TEENAGE DISCRETION ON TIMESHARE

09/06/2019 Declaration ▼

Declaration - DECL (FAM)

Comment

DECLARATION OF MITCHELL STIPP IN SUPPORT OF DEFENDANT S MOTION FOR CHILD INTERVIEW BY FMC, MEDIATION AND TO PERMIT CHILDREN TO EXERCISE TEENAGE DISCRETION ON TIMESHARE

09/11/2019 Opposition and Countermotion ▼

Opposition and Countermotion - OPPC (FAM)

Comment

Plaintiff's Opposition to Defendant s Motion for Child Interview by FMC and Related Relief; and Countermotion for Immediate Return of Children, Make-Up Visitation, Sanctions, and Award of Attorney's Fees

09/11/2019 Notice of Hearing ▼

Notice of Hearing - NOH (FAM)

Comment

Notice of Hearing

09/11/2019 Exhibits ▼

Exhibits - EXHS (FAM)

Comment

Plaintiff's Exhibit in Support of Opposition to Defendant s Motion for Child Interview by FMC and Related Relief, and Countermotion for Immediate Return of Children, Make-Up Visitation, Sanctions, and Award of Attorney s Fees

09/11/2019 Exhibits ▼

Exhibits - EXHS (FAM)

Comment

Plaintiff's Supplemental Exhibit in Support of her Motion for an Order to Show Cause Why Defendant Should Not Be Held in Contempt of Court for Willfully Disobeying the Custody Order; a Request for Immediate Return of the Children, Make up Visitation, and an Award of Attorney s Fees

09/13/2019 Objection ▼

Objection - OBJ (FAM)

Comment

DEFENDANT S OBJECTION TO LETTER BY CHRISTINA CALDERON S THERAPIST DONNA WILBURN AND NOTICE OF LETTER FROM DR. ROY LUBIT IN SUPPORT OF OBJECTION

09/17/2019 Objection ▼

Objection - OBJ (FAM)

Comment

Plaintiff's Objection to Defendant's Letter by Doctor in Support of His Objection to Treating Physician

09/17/2019 Response ▼

Response - RSPN (FAM)

Comment

Response to Plaintiff's Objection filed on August 30, 2019

09/17/2019 Response ▼

Response - RSPN (FAM)

Comment

Response to Plaintiff's Objection filed on September 17, 2019

09/18/2019 Reply to Opposition ▼

Reply to Opposition - ROPP (FAM)

Comment

Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Order to Show Cause Against the Defendant for Willfully Disobeying the Custodial Order, Etc.

09/24/2019 Reply ▼

Reply - RPLY (FAM)

Comment

REPLY TO PLAINTIFF S OPPOSITION TO COUNTERMOTION FOR INTERVIEW OF CHILDREN BY FMC, MEDIATION AT FMC, AND FOR CHILDREN TO EXERCISE TEENAGE DISCRETION

09/24/2019 Exhibits ▼

Exhibits - EXHS (FAM)

Comment

EXHIBITS IN SUPPORT OF DEFENDANT S REPLY TO OPPOSITION TO COUNTERMOTION FOR CHILD INTERVIEW BY FMC, MEDIATION AND TO PERMIT CHILDREN TO EXERCISE TEENAGE DISCRETION ON TIMESHARE

09/24/2019 Notice of Appearance ▼

Notice of Appearance - NOA (FAM)

Comment

Notice of Appearance

09/24/2019 Exhibits ▼

Exhibits - EXHS (FAM)

Comment

Supplemental Exhibits In Support of Defendant's Reply to Opposition to Countermotion for Child Interview by FMC, Mediation and to Permit Children to Exercise Teenage Discretion on Timeshare

09/26/2019 Application ▼

Application - APPL (FAM)

Comment

Ex Parte Application for Order Shortening Time

10/01/2019 Motion ▼

Judicial Officer

Ritchie, T. Arthur, Jr.

Hearing Time

11:00 AM

Result

Referred for Child Interview

Comment

Motion for Child Interview by FMC, Mediation and to Permit Children to Exercise Teenage Discretion on Timeshare

10/01/2019 Motion ▼

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
11:00 AM

Result
Referred for Child Interview

Comment
Plaintiff's Motion for Order to Show Cause Against the Defendant for Willfully Disobeying the Custody Order; a Request for Immediate Return of the Children, Make up Visitation and an Award of Attorney's Fees

10/01/2019 Opposition & Countermotion ▼

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
11:00 AM

Result
Referred for Child Interview

Comment
Defendant's Opposition to Motion for Order to Show Cause, Request for Immediate Return of the Children, Makeup Visitation and Award of Attorney's Fees and Countermotion for Interview of Children by FMC, Mediation at FMC, and for Children to Exercise Teenage Discretion

10/01/2019 Opposition & Countermotion ▼

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
11:00 AM

Result
Referred for Child Interview

Comment
Plaintiff's Opposition to Defendant's Motion for Child Interview by FMC and Related Relief; and Countermotion for Immediate Return of Children, Make-Up Visitation, Sanctions, and Award of Attorney's Fees

10/01/2019 Hearing ▼

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
11:00 AM

Result
Referred for Child Interview

Comment

Plaintiff's Reply to Defendant's Opposition to Plaintiff's Motion for Order to Show Cause Against the Defendant for Willfully Disobeying the Custodial Order, Etc.

10/01/2019 Opposition ▼

Opposition Video

Judicial Officer

Ritchie, T. Arthur, Jr.

Hearing Time

11:00 AM

Result

Referred for Child Interview

Comment

Defendant's Reply to Plaintiff's Opposition to Countermotion for Interview of Children by FMC, Mediation at FMC, and for Children to Exercise Teenage Discretion

10/01/2019 All Pending Motions ▼

Minutes - All Pending Motions

All Pending Motions

Judicial Officer

Ritchie, T. Arthur, Jr.

Hearing Time

11:00 AM

Result

Matter Heard

Parties Present ▲

Petitioner: Stipp, Mitchell David

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Petitioner: Stipp, Christina Calderon

Attorney: Fujii, Valarie I

10/01/2019 Order for Family Mediation Center Services ▼

Order for Family Mediation Center Services

Comment

Order for Family Mediation Center Services

10/01/2019 Request for Child Protection Service Appearance and Records ▼

Request for Child Protection Service Appearance an

Comment

Request for Child Protection Service Appearance and Records

10/07/2019 Status Report ▼

Status Report - SR (FAM)

Comment

Status Report

10/08/2019 Objection ▼

Objection - OBJ (FAM)

Comment

Plaintiff's Objection to Defendant s Status Report Filed October 7, 2019, and Request that it be Stricken Pursuant to EDCR 5.508

10/09/2019 Motion ▼

Motion - MOT (FAM)

Comment

Plaintiff's Emergency Motion for Temporary Primary Physical Custody and Request for Writ of Attachment Order and Attorney's Fees

10/09/2019 Notice of Hearing ▼

Notice of Hearing - NOH (FAM)

Comment

Notice of Hearing

10/09/2019 Ex Parte Application ▼

Application - APPL (FAM)

Comment

Ex Parte Application for an Order Shortening Time

10/09/2019 Ex Parte Application ▼

Application - APPL (FAM)

Comment

Ex Parte Application for an Order Shortening Time

10/10/2019 Opposition ▼

Opposition - OPPS (FAM)

Comment

OPPOSITION TO EX PARTE APPLICATION FOR ORDER SHORTENING TIME ON PLAINTIFF S MOTION FOR PRIMARY

PHYSICAL CUSTODY

10/10/2019 Exhibits ▼

Exhibits - EXHS (FAM)

Comment

EXHIBITS IN SUPPORT OF DEFENDANT S OPPOSITION TO EX PARTE APPLICATION FOR ORDER SHORTENING TIME ON PLAINTIFF S MOTION FOR PRIMARY PHYSICAL CUSTODY

10/11/2019 Order ▼

Order - ORDR (FAM)

Comment

Order Setting Case Management Conference

10/21/2019 Affidavit ▼

Affidavit - AFFT (FAM)

Comment

Plaintiff s Supplemental Affidavit in Support of Her Emergency Motion for Temporary Primary Physical Custody and Request for Writ of Attachment Order and Attorneys Fees

10/21/2019 Opposition and Countermotion ▼

Opposition and Countermotion - OPPC (FAM)

Comment

Opposition to Plaintiff's Motion for Primary Physical Custody and Countermotion for Primary Physical Custody and Related Relief

10/22/2019 Case Management Conference ▼

Case Management Conference Video

Minutes - Case Management Conference

Judicial Officer

Ritchie, T. Arthur, Jr.

Hearing Time

9:00 AM

Result

Decision Made

Parties Present ▲

Petitioner: Stipp, Mitchell David

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Stipp, Mitchell D.

Attorney: Stipp, Mitchell D.

Petitioner: Stipp, Christina Calderon

Attorney: Fujii, Valarie I

10/22/2019 Order Shortening Time ▼

Order Shortening Time - OST (FAM)

Comment

Order Shortening Time on Plaintiff's Emergency Motion for
Temporary Primary Physical Custody

10/22/2019 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (FAM)

Comment

Notice of Entry of Order

10/22/2019 Order for Supervised Visitation ▼

Order for Supervised Visitation

Comment

Order for Supervised Visitation

10/29/2019 Notice of Change of Address ▼

Notice of Change of Address - NCOA (FAM)

Comment

Notice of Change of Address

11/12/2019 Return Hearing ▼

Minutes - Return Hearing

Judicial Officer

Ritchie, T. Arthur, Jr.

Hearing Time

9:00 AM

Result

Evidentiary Hearing

Comment

FMC (CHILD INTERVIEWS)

Parties Present ▲

Petitioner: Stipp, Mitchell David

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Petitioner: Stipp, Christina Calderon

Attorney: Fujii, Valarie I

11/12/2019 Return Hearing ▼

Return Hearing Video

Minutes - Return Hearing

Judicial Officer

Ritchie, T. Arthur, Jr.

Hearing Time

10:00 AM

Result

Evidentiary Hearing

Comment

DONNA'S HOUSE (SUPERVISED EXCHANGES)

Parties Present ▲

Petitioner: Stipp, Mitchell David

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Petitioner: Stipp, Christina Calderon

Attorney: Fujii, Valarie I

11/13/2019 Order Setting Evidentiary Hearing ▼

Order Setting Evidentiary Hearing - OSEH (FAM)

Comment

Order Setting Evidentiary Hearing

11/19/2019 Motion ▼

Judicial Officer

Ritchie, T. Arthur, Jr.

Hearing Time

10:00 AM

Cancel Reason

Vacated - per Judge

Comment

Christina Calderon's Emergency Motion for Temporary Primary Physical Custody and Request for Writ of Attachment Order and Attorneys Fees

11/19/2019 Opposition & Countermotion ▼

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
10:00 AM

Cancel Reason
Vacated - per Judge

Comment
Opposition to Plaintiff's Motion for Primary Physical Custody and
Countermotion for Primary Physical Custody and Related Relief

12/10/2019 Subpoena Electronically Issued ▼

Subpoena Electronically Issued - SUBI (FAM)

Comment
Subpoena for Gerardo Hernandez for Deposition

12/27/2019 Affidavit of Service ▼

Affidavit of Service - AOS (FAM)

Comment
Affidavit of Service of Subpoena for Deposition and Notice of
Deposition on Gerardo Hernandez

01/10/2020 Notice ▼

Notice - NOTC (FAM)

Comment
Notice of Telephonic EDCR 5.602(d) Conference

01/13/2020 NRCP 16.2 Case Management Conference ▼

NRCP 16.2 Case Management Conference - CMCN (FAM)

Comment
Plaintiff's Production of Documents and List of Witnesses Pursuant
to NRCP 16.2

01/13/2020 Certificate of Mailing ▼

Certificate of Mailing - CERT (FAM)

Comment
Certificate of Mailing

01/14/2020 Motion to Compel ▼

Motion to Compel - MCOM (FAM)

Comment
Plaintiff's Motion to Compel Defendant's Discovery Responses,
Including Answers to Interrogatories and Responses to Requests for

Production of Documents; Failure to Make NRCP 16.2 Disclosures and Productions; and for an Award of Attorney's Fees and Costs

01/14/2020 Notice of Hearing ▼

Notice of Hearing - NOH (FAM)

Comment
Notice of Hearing

01/14/2020 Exhibits ▼

Exhibits - EXHS (FAM)

Comment
Plaintiff's Exhibits in Support of Plaintiff's Motion to Compel Discovery

01/14/2020 Opposition ▼

Opposition - OPPS (FAM)

Comment
Defendant's Opposition to Motion to Compel and Related Relief

01/14/2020 Exhibits ▼

Exhibits - EXHS (FAM)

Comment
Exhibits in Support of Defendant's Opposition to Motion to Compel and Related Relief

01/15/2020 Ex Parte Application for Order ▼

Ex Parte Application for Order - EPAO (FAM)

Comment
Plaintiff's Ex Parte Application for an Order Shortening Time for her Motion to Compel Discovery

01/15/2020 Countermotion ▼

Countermotion - CTM (FAM)

Comment
Supplement to Opposition to Motion to Compel: Countermotion in Limine

01/15/2020 Exhibits ▼

Exhibits - EXHS (FAM)

Comment
Exhibits in Support of Defendant's Supplement: Countermotion in Limine

01/17/2020 Order Shortening Time ▼

Order Shortening Time - OST (FAM)

Comment

Order Shortening Time

01/17/2020 Request ▼

Request - REQT (FAM)

Comment

Request for Hearing

01/17/2020 Ex Parte Application ▼

Ex Parte Application - EPAP (FAM)

Comment

Ex Parte Application For Order Setting Hearing/Shortening Time

01/17/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (FAM)

Comment

Notice of Entry of Order

01/21/2020 Pre-trial Memorandum ▼

Pre-trial Memorandum - PMEM (FAM)

Comment

Defendant's Pretrial Memorandum

01/21/2020 Receipt of Copy ▼

Receipt of Copy - ROC (FAM)

Comment

Receipt of Copy

01/21/2020 Witness List ▼

Witness List - WTLT (FAM)

Comment

Witness List- Defendant

01/21/2020 Receipt of Copy ▼

Receipt of Copy - ROC (FAM)

Comment

Receipt of Copy

01/21/2020 List of Witnesses ▼

List of Witnesses - LTWT (FAM)

Comment

Plaintiff's List of Witnesses for Evidentiary Hearing

01/22/2020 Subpoena ▼

Subpoena SUB (FAM)

Comment

Trial Subpoena (Mia Stipp)

01/22/2020 Subpoena ▼

Subpoena SUB (FAM)

Comment

Trial Subpoena (Ethan Stipp)

01/22/2020 Objection ▼

Objection - OBJ (FAM)

Comment

**Plaintiff s Objection to Defendant s Pre-Trial Memorandum Filed
January 21, 2020**

01/23/2020 Evidentiary Hearing ▼

Minutes - Evidentiary Hearing

Evidentiary Hearing Video Part 1 of 7

Evidentiary Hearing Video Part 2 of 7

Evidentiary Hearing Video Part 3 of 7

Evidentiary Hearing Video Part 4 of 7

Evidentiary Hearing Video Part 5 of 7

Evidentiary Hearing Video Part 6 of 7

Evidentiary Hearing Video Part 7 of 7

Evidentiary Hearing

Judicial Officer

Ritchie, T. Arthur, Jr.

Hearing Time

9:00 AM

Result

Matter Continued

Comment

(Cont. from 1/23/2020, 3/5/2020 & 3/24/2020) - FULL DAY

Parties Present ▲

Petitioner: Stipp, Mitchell David

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Stipp, Mitchell D.

Attorney: Stipp, Mitchell D.

Petitioner: Stipp, Christina Calderon

Attorney: Fujii, Valarie I

01/24/2020 Motion to Compel ▼

Judicial Officer

Fic, Holly

Hearing Time

1:30 PM

Result

Matter Continued

Comment

Plaintiff's Motion to Compel Defendant's Discovery Responses, Including Answers to Interrogatories and Responses to Requests for Production of Documents; Failure to Make NRCP 16.2 Disclosures and Productions; and for an Award of Attorney's Fees and Costs

01/24/2020 Opposition ▼

Opposition Video

Judicial Officer

Fic, Holly

Hearing Time

1:30 PM

Result

Matter Continued

Comment

Mitchell Stipp's Opposition to Motion to Compel and Related Relief

01/24/2020 All Pending Motions ▼

Minutes - All Pending Motions

Judicial Officer

Fic, Holly

Hearing Time

1:30 PM

Result

Matter Heard

Comment

1/24/20

Parties Present ▲

Petitioner

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Petitioner: Stipp, Christina Calderon

Attorney: Fujii, Valarie I

01/29/2020 Motion to Compel ▼

Motion to Compel - MCOM (FAM)

Comment

Motion to Compel Responses to Discovery

01/29/2020 Exhibits ▼

Exhibits - EXHS (FAM)

Comment

Exhibits in Support of Defendant's Motion to Compel Discovery

01/29/2020 Declaration ▼

Declaration - DECL (FAM)

Comment

Declaration/Affidavit of Mitchell Stipp in Support of Motion to Compel

01/30/2020 Notice of Hearing ▼

Notice of Hearing - NOH (FAM)

Comment

Notice of Hearing

02/07/2020 Status Check ▼

Judicial Officer

Fic, Holly

Hearing Time

3:00 PM

Cancel Reason

Vacated

Comment
Supplement / outstanding issues

02/07/2020 Memorandum ▼

Memorandum - MEMO (FAM)

Comment
Plaintiff's Memorandum of Attorney's Fees and Costs

02/07/2020 Ex Parte Application ▼

Ex Parte Application - EPAP (FAM)

Comment
Ex Parte Application for an Order Shortening Time on Defendant's Motion to Compel

02/07/2020 Ex Parte Application ▼

Ex Parte Application - EPAP (FAM)

Comment
Ex Parte Application for Order Setting hearing on Motion in Limine

02/11/2020 Stipulation and Order ▼

Stipulation and Order - SAO (FAM)

Comment
Stipulation and Order Vacating February 7, 2020 Hearing Before the Discovery Commissioner

02/12/2020 Opposition and Countermotion ▼

Opposition and Countermotion - OPPC (FAM)

Comment
Plaintiff's Opposition to Defendant's Motion to Compel Responses to Discovery and for Attorney's Fees and Costs; and Countermotion for Attorney's Fees

02/12/2020 Exhibits ▼

Exhibits - EXHS (FAM)

Comment
Plaintiff's Exhibits in Support of Plaintiff's Opposition to Defendant's Motion to Compel Responses to Discovery and for Attorney's Fees and Costs; and Countermotion for Attorney's Fees

02/13/2020 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (FAM)

Comment
Notice of Entry of Stipulation and Order Vacating February 7, 2020
Hearing Before the Discovery Commissioner

02/13/2020 Notice of Hearing ▼

Notice of Hearing - NOH (FAM)

Comment
Notice of Hearing

02/13/2020 Opposition ▼

Opposition - OPPS (FAM)

Comment
Opposition to Plaintiff's Request for Fees

02/13/2020 Reply ▼

Reply - RPLY (FAM)

Comment
Defendant's Reply to Opposition to Motion to Compel and
Opposition to Countermotion for Attorney's Fees and Costs

02/14/2020 Notice of Hearing ▼

Notice of Hearing - NOH (FAM)

Comment
Notice of Hearing

02/14/2020 Order Shortening Time ▼

Order Shortening Time - OST (FAM)

Comment
Order Shortening Time (re: Motion to Compel Responses to
Discovery and for Attorney's Fees and Costs)

02/21/2020 Motion ▼

Judicial Officer
Fic, Holly

Hearing Time
3:00 PM

Result
On for Status Check

Comment
Mitchell Stipp's Motion to Compel Responses to Discovery and for
Attorney's Fees and Costs

02/21/2020 Opposition ▼

Judicial Officer
Fic, Holly

Hearing Time
3:00 PM

Result
Matter Heard

Comment
Plaintiff's Opposition to Defendant's Motion to Compel Responses to Discovery and for Attorney's Fees and Costs; and Countermotion for Attorney's Fees

02/21/2020 Opposition ▼

Judicial Officer
Fic, Holly

Hearing Time
3:00 PM

Result
Matter Heard

Comment
Mitchell Stipp's Opposition to Plaintiff's Request for Attorney's Fees and Costs

02/21/2020 Hearing ▼

Judicial Officer
Fic, Holly

Hearing Time
3:00 PM

Result
Matter Heard

Comment
Defendant's Reply to Opposition to Motion to Compel and Opposition to Countermotion for Attorney's Fees and Costs

02/21/2020 All Pending Motions ▼

All Pending Motions Video

Minutes - All Pending Motions

Judicial Officer
Fic, Holly

Hearing Time
3:00 PM

Result

Stipulation and Order

Comment

Mitchell Stipp's Motion to Compel Responses to Discovery and for Attorney's Fees and Costs...Plaintiff's Opposition to Defendant's Motion to Compel Responses to Discovery and for Attorney's Fees and Costs; and Countermotion for Attorney's Fees...Mitchell Stipp's Opposition to Plaintiff's Request for Attorney's Fees and Costs...Defendant's Reply to Opposition to Motion to Compel and Opposition to Countermotion for Attorney's Fees and Costs

Parties Present ▲

Petitioner: Stipp, Mitchell David

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Stipp, Mitchell D.

Attorney: Stipp, Mitchell D.

Petitioner: Stipp, Christina Calderon

Attorney: Fujii, Valarie I

02/25/2020 Notice ▼

Notice - NOTC (FAM)

Comment

Notice of Telephone Conference Required by Discovery
Commissioner to Discuss Plaintiff's Deficient Discovery Responses

02/27/2020 Ex Parte Application ▼

Ex Parte Application - EPAP (FAM)

Comment

Stipp - Ex Parte Motion for an Order Shortening Time (with Notice)
re Motion in Limine

02/28/2020 Status Check ▼

Minutes - Status Check

Judicial Officer

Fic, Holly

Hearing Time

3:00 PM

Result

Off Calendar

03/02/2020 Opposition and Countermotion ▼

Opposition and Countermotion - OPPC (FAM)

Comment
Plaintiff's Opposition to Defendant's Motion in Limine and Counter-Motion for Attorney's Fees

03/02/2020 Proof ▼

Proof - PROF (FAM)

Comment
Offers of Proof Regarding Witnesses for Evidentiary Hearing

03/03/2020 Production of Documents ▼

Production of Documents - PDOC (FAM)

Comment
Plaintiff's Supplemental Production of Documents and List of Witnesses Pursuant to NRCp 16.2 NO ATTACHMENTS

03/04/2020 Status Report ▼

Status Report - SR (FAM)

Comment
Status Report

03/24/2020 Minute Order ▼

Minutes - Minute Order

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
3:30 PM

Result
Telephone Conference

Comment
Telephone Conference

Parties Present ▲

Petitioner: Stipp, Mitchell David

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Stipp, Mitchell D.

Attorney: Stipp, Mitchell D.

Petitioner

Attorney: Fujii, Valarie I

03/31/2020 Motion ▼

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
11:00 AM

Cancel Reason
Vacated - per Judge

Comment
Notice of Hearing Defendant's Motion in Limine

03/31/2020 Opposition & Countermotion ▼

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
11:00 AM

Cancel Reason
Vacated - per Judge

Comment
Pltf's Opposition to Deft's Motion in Limine and Counter-Motion for Attorney's Fees

04/03/2020 Stipulation and Order ▼

Stipulation and Order - SAO (FAM)

Comment
STIPULATION AND ORDER RESOLVING DISCOVERY DISPUTES
AND TRIAL MATTERS

04/03/2020 Notice of Entry of Stipulation and Order ▼

Notice of Entry of Stipulation and Order - NTSO (FAM)

Comment
Notice of Entry of Stipulation and Order Resolving Discovery
Disputes and Trial Matters

04/07/2020 Order Setting Evidentiary Hearing ▼

Order Setting Evidentiary Hearing - OSEH (FAM)

Comment
Amended Order Setting Evidentiary Hearing

05/06/2020 Order ▼

Order

05/06/2020 Order ▼

Order

05/06/2020 Order ▼

Order

05/06/2020 Order ▼

Order

05/13/2020 Order Setting Evidentiary Hearing ▼

Order Setting Evidentiary Hearing

08/21/2020 Motion ▼

Motion - MOT (FAM)

Comment

Plaintiff's Emergency Motion Pursuant to NRCP Rule 43

08/21/2020 Opposition ▼

Opposition - OPPS (FAM)

Comment

OPPOSITION TO PLAINTIFF S EMERGENCY MOTION PURSUANT TO NRCP 43

08/24/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (FAM)

Comment

Notice of Entry of Order

08/24/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (FAM)

Comment

Notice of Entry of Order

08/24/2020 Motion ▼

Motion - MOT (FAM)

Comment

Plaintiff's Renewed Emergency Motion Pursuant to NRCP Rule 43

08/24/2020 Family Court Motion Opposition Fee Information Sheet ▼

Family Court Motion Opposition Fee Information Sheet - MOFI (FAM)

Comment
Family Court Motion Opposition Fee Information Sheet

08/24/2020 Ex Parte Application ▼

Ex Parte Application - EPAP (FAM)

Comment
Ex Parte Application for an Order Shortening Time

08/24/2020 Opposition ▼

Opposition - OPPS (FAM)

Comment
Opposition to Plaintiff's Emergency Motion Pursuant to NRCP 43

08/25/2020 Order Shortening Time ▼

Order Shortening Time

Comment
OST on Emergency Motion Pursuant to NRCP 43

08/25/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (FAM)

Comment
Notice of Entry of Order

08/25/2020 Notice of Hearing ▼

Notice of Hearing - NOH (FAM)

Comment
Notice of Hearing

08/25/2020 Supplemental List of Witnesses and Production of Documents

▼

Supplemental List of Witnesses and Production of Documents - SWPD (FAM)

Comment
Plaintiff's Second Supplemental Production of Documents and List of Witnesses Pursuant to NRCP 16.2

08/25/2020 Receipt of Copy ▼

Receipt of Copy - ROC (FAM)

Comment
Receipt of Copy

08/27/2020 Motion ▼

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
9:00 AM

Result
Decision Made

Comment
Plaintiff's Emergency Motion Pursuant to NRCP Rule .43

08/27/2020 Opposition ▼

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
9:00 AM

Result
Decision Made

Comment
Mitchell Stipp's Opposition to Plaintiff's Emergency Motion Pursuant to NRCP 43

08/27/2020 All Pending Motions ▼

Minutes - All Pending Motions

All Pending Motions Video Part 1 of 8

All Pending Motions Video Part 2 of 8

All Pending Motions Video Part 3 of 8

All Pending Motions Video Part 4 of 8

All Pending Motions Video Part 5 of 8

All Pending Motions Video Part 6 of 8

All Pending Motions Video Part 7 of 8

All Pending Motions Video Part 8 of 8

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
9:00 AM

Result
Matter Heard

Parties Present ▲
Petitioner: Stipp, Mitchell David
Attorney: Smith, Radford J

Attorney: Smith, Radford J

Attorney: Smith, Radford J

Petitioner: Stipp, Christina Calderon

Attorney: Fujii, Valarie I

09/04/2020 Brief ▼

Brief - BREF (FAM)

Comment

Plaintiff s Memorandum of Points and Authorities Following Evidentiary Hearing

09/04/2020 Brief ▼

Brief - BREF (FAM)

Comment

Defendant's Closing Brief

09/17/2020 Findings of Fact, Conclusions of Law and Judgment ▼

Findings of Fact, Conclusions of Law and Judgment

Comment

Findings of Fact, Conclusions of Law, and Order

09/17/2020 Notice of Entry of Order ▼

Notice of Entry of Order - NEOJ (FAM)

Comment

Notice of Entry of Findings of Fact, Conclusions of Law, and Order

09/28/2020 Minute Order ▼

Minutes - Minute Order

Judicial Officer

Ritchie, T. Arthur, Jr.

Hearing Time

11:00 AM

Result

Decision Made

09/28/2020 Notice of Appearance ▼

Notice of Appearance - NOA (FAM)

Comment

Notice of Appearance

09/28/2020 Notice of Appeal ▼

Notice of Appeal - NOAS (FAM)

Comment
Notice of Appeal

09/28/2020 Case Appeal Statement ▼

Case Appeal Statement - ASTA (FAM)

Comment
Case Appeal Statement

09/29/2020 Notice of Appeal ▼

Amended Notice of Appeal - ANOA (FAM)

10/06/2020 Motion ▼

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
11:00 AM

Cancel Reason
Vacated

Comment
Plaintiff's Renewed Emergency Motion Pursuant to NRCP Rule 43

10/06/2020 Opposition ▼

Judicial Officer
Ritchie, T. Arthur, Jr.

Hearing Time
11:00 AM

Cancel Reason
Vacated

Comment
Opposition to Plaintiff's Emergency Motion Pursuant to NRCP 43

10/29/2020 Estimate of Transcript ▼

Estimate of Transcript

Comment
JANUARY 23, 2020; MARCH 5, 2020; AUGUST 27, 2020

EXHIBIT B

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FFCL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CHRISTINA CALDERON,)
fka Christina Calderon Stipp,)
)
Plaintiff,)
vs.)
)
MITCHELL DAVID STIPP,)
)
Defendant.)
_____)

CASE NO. D-08-389203-Z
DEPT. NO. "H"

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

Dates of Hearing: January 23, 2020, March 5, 2020, and
August 27, 2020

This matter came on for evidentiary hearing before Art Ritchie, District Court Judge, Department H. Christina Calderon was present with her attorneys, Valarie I. Fujii, Esq, and Aaron Grigsby, Esq. Mitchell Stipp was present with his attorney, Radford J. Smith, Esq. The court reviewed the papers and pleadings, the evidence admitted at the hearing, and for good cause, makes the following findings of fact, conclusions of law, and orders.

1 **I. STATEMENT OF THE CASE**

2
3 Christina Calderon and Mitchell Stipp were married on July 18, 1997 in
4 Nevada. Two children were born the issue of the parties. Mia Stipp was born on
5 October 19, 2004, and Ethan Stipp was born on March 24, 2007. Nevada is the
6 home state of the children.
7

8 The parties filed a Joint Petition for Divorce on February 28, 2008, and
9 they were divorced by the entry of a Decree of Divorce on March 6, 2008. The
10 case was reopened nine months after the divorce, beginning a methodical seven
11 years of post-divorce litigation that included appeals to the Nevada Supreme
12 Court in December, 2010 and December, 2012.
13

14 The case was closed with the parties' Stipulation and Order Resolving
15 Physical Custody, Timeshare, Child Support, and Parenting Matters that was filed
16 on July 9, 2014. This stipulation and order is the most recent custodial order. It
17 contains the parties' agreement that they share joint legal and joint physical
18 custody of their children on a one week on, one week off timeshare schedule,
19 with exchanges every Friday. The stipulation and order defines holiday and
20 vacation time that supersedes the week to week custody schedule. The stipulation
21 and order contains the parties' agreement to adopt a mutual behavioral order, and
22 an agreement to allow either party to seek family counseling with a licensed,
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1 qualified mental health professional, without the consent of the other parent,
2 effective January 1, 2015.
3

4 The case was closed between July, 2014, and August 26, 2019, when
5 Mitchell Stipp filed a motion for child interview, to permit children to exercise
6 teenage discretion, and for other relief. The motion was set for hearing on
7 October 1, 2019. This case was assigned to Department H on August 26, 2019.
8 Christina Calderon filed a motion to enforce the custody order and for other relief
9 on August 29, 2019, and Christina Calderon's opposition to motion and
10 countermotion for return of children, compensatory time, and for other relief was
11 filed on September 11, 2019. Mitchell Stipp's reply to opposition and
12 countermotion was filed on September 24, 2019.
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16 The matter was heard on October 1, 2019. The parties were present with
17 counsel. The court reviewed the case, granted the motion to enforce the most
18 recent custodial order, ordered the parties to resume the week to week custody
19 schedule, referred the parties to the Family Mediation Center to attempt
20 mediation, and ordered child interviews. The court was advised that Nicolas
21 Ponzio had worked with the children previously, and the court ordered that the
22 children resume seeing Nicolas Ponzio to address the parent-child relationship.
23
24 The case was set for further proceedings on November 12, 2019.
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1 Christina Calderon filed an emergency motion to enforce, and for
2 temporary custody on October 9, 2019. The court granted the motion requesting
3 an expedited hearing because Ms. Calderon was not receiving her custodial time,
4 and set the matter for hearing on October 22, 2019. On that date, the parties
5 appeared with counsel. The court again ordered that the parties resume the week
6 to week custody schedule, and ordered supervised custody exchanges to take
7 place at Donna's House at the Family Court pending the hearing on November
8 12, 2019. The matter was heard on November 12, 2019. The parties were present
9 with counsel. The court reviewed the child interview reports, and the letter from
10 Donna's House that reported the children refused to participate in custody
11 exchanges. The court found adequate cause for an evidentiary hearing, set a
12 discovery schedule, and set the matter for hearing on January 23, 2020.

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17 The evidentiary hearing was held over several court sessions. The court
18 heard testimony from Mia Stipp and Ethan Stipp on January 23, 2020. On March
19 5, 2020, the court heard testimony from Mitchell Stipp. On August 27, 2020, the
20 court heard testimony from Elena Petsas and Christina Calderon. The court
21 concludes that the evidence presented at the hearing was sufficient for the court to
22 decide this case, and for good cause, makes the following findings of fact and
23 conclusions of law.
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1 **II. FINDINGS AND CONCLUSIONS**

2 This court has custody jurisdiction and personal jurisdiction over the
3 parties to this case. This court has continuing exclusive custody jurisdiction over
4 post-judgment custody matters pursuant to the UCCJEA as adopted in the Nevada
5 Revised Statutes. The parties reside in Clark County, Nevada. Nevada is the
6 home state of the parties' children.
7

8
9 NRS 125C.035 provides that in any action for determining physical
10 custody of a minor child, the sole consideration of the court is the best interest of
11 the child. Nevada statutes and case law provide that the district court has broad
12 discretion concerning child custody matters. *Rooney v. Rooney*, 109 Nev. 540,
13 853 P.2d 123 (1993).
14
15

16 Parties in family law matters are free to contract regarding child custody
17 and such arrangements are generally enforceable if they are not unconscionable,
18 illegal, or in violation of public policy. *Mizrachi v. Mizrachi*, 132 Nev. 666
19 (2016), citing *Rivero v. Rivero*, 125 Nev. 410, 261 P.3d 213 (2009). Physical
20 custody involves the time the children physically spend in the care of a parent.
21 Parenting Agreements are valuable and enforceable, and a parent seeking to
22 modify a visitation order or agreement, over the objection of the other parent,
23 must show that the change is in the best interest of the child. *Mizrachi v.*
24 *Mizrachi*, 132 Nev. 666 (2016).
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**A. MITCHELL STIPP’S AND CHRISTINA CALDERON’S
MOTIONS TO RESOLVE PARENT- CHILD ISSUES**

In July, 2014, Christina Calderon and Mitchell Stipp agreed that it was in the best interest of their children that they share joint legal and joint physical custody. The parties’ Stipulation and Order Resolving Physical Custody, Timeshare, Child Support, and Parenting Matters that was filed on July 9, 2014, is the most recent custodial order. If parties agree to joint physical custody, there is a presumption affecting the burden of proof that joint custody would be in the best interest of the children. Both parties filed motions to resolve parent-child issues.

The court concludes that it is in Ethan’s best interest to maintain the joint physical custody schedule. The court concludes that it is in Mia’s best interest to modify the joint physical custody schedule. The court received sufficient proof to support a conclusion that Mia should live primarily with Mitchell Stipp, and have meaningful visitation with Christina Calderon. The findings identify the many reasons for this conclusion, but the fact that the children have spent no overnights with their mother for more than one year, and have had no meaningful custody time with their mother since August, 2019, is unjustified, and not in the best interest of these children.

The Nevada Supreme Court held that a change in a custody order or a change in a visitation schedule affects a party’s fundamental rights concerning

1 custody. *Gordon v. Geiger*, 133 Nev. 542 (2017). The Nevada Supreme Court
2 discussed the principles of res judicata as it relates to a post-judgment request to
3 change child custody orders in *Castle v. Simmons*, 120 Nev. 98 (2004), and in
4 *Martin v. Martin*, 120 Nev. 342 (2004). The doctrine of res judicata, as applied
5 through the changed circumstances doctrine, promotes finality and stability in
6 child custody cases. The Nevada Supreme Court adopted an “adequate cause”
7 standard, holding that the district court has discretion to deny a motion to modify
8 custody without holding a hearing if the affidavits do not show a prima facie basis
9 for a change in custody. To constitute a prima facie case it must be shown that
10 (1) the facts alleged in the affidavits are relevant to grounds for modification; and
11 (2) the evidence is not merely cumulative or impeaching. *Rooney v. Rooney*, 109
12 Nev. 540, 853 P.2d 123 (1993). This court concluded that there was adequate
13 cause to re-open custody and visitation in this case, primarily because the parties’
14 children refused to follow the parties’ joint custody schedule.
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20 The legal standard for considering a modification of a joint physical
21 custody order was established by the Nevada Supreme Court in *Truax v. Truax*,
22 110 Nev. 437, 874 P.2d 10 (1994). The Nevada Supreme Court upheld a best
23 interest test for modification of a joint physical custody order, as opposed to the
24 two-part, *Ellis v. Carucci* test for primary/secondary custodial orders. This legal
25 standard was ratified in *Potter v. Potter*, 121 Nev. 613, 119 P.3d 1246 (2005). In
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1 2015, the Nevada Legislature made policy statements, and directed courts
2 regarding the establishment and modification of child custody orders with
3 amendments to Chapter 125C.
4

5 NRS 125C.0025 Joint Physical Custody, provides, in part:

6
7 1. When a court is making a determination regarding the physical
8 custody of a child, there is a preference that joint physical
9 custody would be in the best interest of a minor child if:

10 (a) The parents have agreed to an award of joint physical
11 custody or so agree in open court at a hearing for the purpose
12 of determining the physical custody of the minor child; or

13 (b) A parent has demonstrated, or has attempted to
14 demonstrate but has had his or her efforts frustrated by the
15 other parent, an intent to establish a meaningful relationship
16 with the minor child.

17 This court applied the “best interest” standard to resolve this dispute. In a
18 contested case, the district court weighs factors that may affect the consequence
19 of placement. Factors the court considered are found in Nevada statutes and in
20 decisional law.

21 NRS 125C.0035 (4) sets forth factors that courts are required to consider as
22 part of the balancing test. This court, in evaluating this custody dispute,
23 considered the applicable statutory factors and the decisional law factors.

24 Specifically:

25
26 (a) **The wishes of the child if the child is of sufficient age and**
27 **capacity to form an intelligent preference as to his or her**
28 **physical custody.**

1 On January 23, 2020, the court heard testimony from Mia Stipp, age 15,
2 and Ethan Stipp, age 13. Mia testified for more than 1½ hours and Ethan testified
3 for an hour. They answered questions from counsel and the court. This evidence
4 established the fact that in August, 2019 the children refused to follow the
5 parents' joint physical custody schedule that had been in place since 2014. Both
6 children testified that they preferred to live primarily with Mitchell Stipp.
7
8

9 Christina Calderon testified that the sole cause for this preference is
10 Mitchell Stipp's strong influence over the children. Christina Calderon testified
11 that Mitchell Stipp undermined her reasonable discipline of the children, and that
12 he unreasonably supported the children's decisions not to see her. Mitchell Stipp
13 testified that he brought this motion after physical altercations between Christina
14 Calderon and Mia in May, 2019, and August, 2019, and that he encouraged the
15 children to follow the court's orders.
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19 The court finds that Mia Stipp was articulate and intelligent, and presented
20 as older than fifteen years of age. Mia thoughtfully responded to difficult
21 questions from counsel about her relationship with her mother and about physical
22 altercations with her mother. Mia described her mother as stubborn, selfish,
23 arrogant, nice sometimes, and smart and intelligent. The court sees some
24 similarity between Mia and her mother.
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1 Mia has been defiant to her mother. Mia calls her mother Christina, despite
2 knowing her mother considers it disrespectful, and despite being told by her
3 father not to do it. On balance, the court finds that Mia is of sufficient age and
4 capacity to form an intelligent preference as to physical custody, and the court
5 considered her preference to live primarily with her father.
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8 Ethan was twelve years of age when he testified. Ethan presented as
9 physically older than his age, but the depth and maturity of his testimony was
10 materially different from Mia's testimony. Ethan testified that he attended Faith
11 Lutheran, played club baseball, and that after playing in the major leagues he
12 wants to become an attorney like his parents. Ethan testified he preferred to live
13 with his father, and testified that he would not go to his mother's house even if his
14 phone and his baseball were taken away. Christina Calderon and Ethan have had
15 no physical altercations. Christina Calderon testified on August 27, 2020, that
16 Ethan texts her daily. The court concludes that materially less weight should be
17 given to Ethan's stated preference to live primarily with his father.
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21 The children's stated preference is not, by itself, intelligent or sufficiently
22 justified to warrant granting Mia and Ethan the authority to circumvent the
23 decision of their parents to share physical custody. The court is saddened by its
24 conclusion that the best interest consideration of preference has been polluted and
25 manipulated by a litany of poor parental decisions. The papers and pleadings and
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1 the witness testimony shows that both parents have empowered the children to
2 control their parents, and to seek refuge from parental discipline with the other
3 parent. The therapeutic resource has given the children a forum to air grievances
4 against their parents and contributed to a year of expensive and difficult litigation.
5

6 The catalyst for this litigation was conflict between a mother and her
7 fifteen year old daughter about finding pornography on an iPad, about whether
8 Mia should be meeting with her boyfriend in the park after school, whether Mia
9 should get off the phone with her boyfriend on a school night, whether Mia
10 should get permission before she changes the thermostat, and whether a teenager
11 should call her parent by their first name. Except for the fact that these disputes
12 resulted in physical altercations, they hardly warrant a loss of physical custody.
13 The other best interest considerations, on balance, are just as important as
14 preference.
15

16 **(b) Any nomination of a guardian for the child by a parent.**

17 This consideration is not applicable. The placement consideration was with
18 the parties.
19

20 **(c) Which parent is more likely to allow the child to have frequent
21 associations and a continuing relationship with the noncustodial
22 parent.**

23 The court finds that both parents are equally likely to allow the children to
24 have frequent associations and a continuing relationship with the other parent.
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1 The parties testified that they support the important relationship between the
2 children and the other parent. For five years before this matter was reopened, the
3 parties followed the joint physical custody schedule. Christine Calderon alleged
4 that Mitchell Stipp does not support the children's relationship with her.
5 Mitchell Stipp testified that he does everything he can to encourage his children
6 to spend time with Christina Calderon. Mitchell Stipp followed the joint physical
7 custody schedule after the altercation between Mia and Christina Calderon in
8 May, 2019. Both Mia and Ethan testified that their father told them to resume
9 the schedule while this matter has been pending. It is a shame that Mitchell
10 Stipp's influence over his children has been so ineffective.

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15 **(d) The level of conflict between the parents; and**

16 **(e) The ability of the parents to cooperate to meet the needs of the**
17 **child.**

18 The parties continue to have significant conflict. Despite agreements and
19 orders, they continue to be unsuccessful in managing their custodial
20 responsibilities without conflict. There was evidence of hopeful co-parenting
21 attempts in 2019, when the parties met to discuss Mia's boyfriend, and to discuss
22 coordinating rules on social media and telephone use. These attempts at co-
23 parenting were unsuccessful when they were tested by the events of May, 2019
24 and August, 2019.

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(f) The mental and physical health of the parents.

The court finds that Christina Calderon and Mitchell Stipp are mentally and physically fit.

(g) The physical, developmental and emotional needs of the child.

Ethan is 13 years of age, and Mia will be 16 years of age in October, 2020. The children are successful students, and have benefited from engaged, committed, and dedicated parenting. The children require a stable home environment with both parents to ensure that their physical, developmental and emotional needs are met. Both parents can provide for the children’s physical, developmental, and emotional needs.

(h) The nature of the relationship of the child with each parent.

The court finds that the children have a bonded relationship with both parents. Currently, the children are aligned with Mitchell Stipp. Ethan and Mia testified they have a close relationship with their father, with his wife, Amy, and with their brother, Mitchell, age 9.

The relationship between Mia and her mother is fractured, in need of time, and changes in behavior to improve. The relationship between with Ethan and his mother has been damaged by exposure to conflict between Mia and Christina Calderon. Both Mia and Ethan have been affected by Christina Calderon’s negative attitude toward Mitchell Stipp, his wife, Amy, and their son, Mitchell.

1 The children have been exposed to a toxic mix of poor parental interaction, and
2 they have been empowered to expect that they can do what they want, especially
3 in areas where their parents do not agree.
4

5 The court finds that Mitchell Stipp is not wholly responsible for the poor
6 relationship between the children and their mother. Christina Calderon has
7 engaged in arguments with the children in which she has used inappropriate
8 language. Christina Calderon has engaged in at least two physical fights with Mia
9 in her home in 2019. Both Ethan and Mia testified that when Christina Calderon
10 would get angry at them, she would yell at them and call them names like
11 “asshole” or “bitch”, and that Ms. Calderon would call or would threaten to call
12 or text teachers and coaches to tell them that the children were misbehaving or
13 that they would be punished.
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17 Mia and Ethan have a close relationship with their brother, Mitchell, who
18 has special needs. Both Ethan and Mia testified that Christina Calderon made
19 disparaging and hurtful comments about Mitchell during an argument on
20 Mother’s Day in 2017. Mia has a close relationship with her step-mother. Mia
21 testified that she was upset when she learned that Christina Calderon’s contact
22 name on her phone for Amy was Bruja. These actions have not helped Christina
23 Calderon’s relationship with the children.
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27 **(i) The ability of the child to maintain a relationship with any**
28 **sibling.**

1 The parties' children will be able to maintain their important relationship
2 with each other and with their brother through the custodial order.
3

4 **(j) Any history of parental abuse or neglect of the child or a sibling**
5 **of the child.**

6 The court concludes that neither party proved a history of parental abuse
7 and neglect of the children since the entry of the most recent custodial order.
8 The physical altercations between Mia and her mother are addressed in the
9 findings concerning domestic violence.
10

11 **(k) Whether either parent or any other person seeking physical**
12 **custody has engaged in an act of domestic violence against the**
13 **child, a parent of the child or any other person residing with the**
14 **child.**

15 The court concludes that Mitchell Stipp proved that Christina Calderon
16 committed acts of domestic violence against Mia in May, 2019 and in August,
17 2019. Mia, Ethan, and Christina Calderon testified about these altercations. The
18 children described screaming, yelling, hair pulling, pushing, and punching.
19 Christina Calderon denied ever striking Mia, and minimized the physical
20 altercations. The court weighed the evidence and concludes that the children's
21 accounts were more credible. The May, 2019 and August, 2019 incidents were
22 traumatic for both Mia and Ethan.
23
24

25 Domestic violence is always relevant to child custody. The weight that
26 these two incidents are given is mitigated by the fact that Mia was an active
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1 participant in the physical altercations, that it is difficult to determine the identity
2 of the primary aggressor, and the relative severity of injuries from these incidents
3 was minor.
4

5 On May 29, 2019, Mia was at her mother's home preparing to leave for a
6 two day choir trip to Disneyland the next day. Mia testified that she had an
7 argument with her mother over the thermostat. Mia had adjusted the thermostat
8 without permission. Mia testified that her mother told her she was calling her
9 teacher to tell her Mia was not going on the trip. Mia testified that she got mad
10 and started pouring soap down a sink. An argument and a tug of war over Mia's
11 phone followed. Mia testified that her mother tackled her and pulled her hair.
12 Ethan testified that he heard and saw the physical altercation between Mia and his
13 mother, which he said included them hitting each other with closed fists. Mia
14 locked herself in her room and called her father. Mitchell Stipp and his wife came
15 and picked Mia up, and Mia went on the choir trip to Disneyland the next day.
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20 Mia stayed at her father's home for a short time after the May, 2019
21 incident. The parties resumed the week to week custody schedule until August,
22 2019. On August 13, 2019, Mia was at her mother's home and on her phone with
23 her boyfriend. Mia testified that her mother told her to hang up and go to bed
24 because it was a school night. When she did not get off the phone, Mia testified
25 that a loud argument started with her mother getting in her face. Mia testified that
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1 she pushed her mother away. Mia described a physical fight in the hallway with
2 scratching, hair pulling, and pushing. Mia testified that she barricaded herself in
3 her room and called her father. Ethan testified that he was present in the home on
4 August 13, 2019, and testified that he heard yelling and cursing, and saw his
5 mother on top of his sister on Mia's bed, and described both hitting each other.
6
7

8 The August 13, 2019 incident was the catalyst for the refusal of the
9 children to follow the week to week custody schedule and the filing of the
10 custody motions.
11

12 **(I) Whether either parent or any other person seeking physical**
13 **custody has committed any act of abduction against the child or**
14 **any other child.**

15 The court finds that neither party proved that the other person committed
16 acts of abduction against the children since the entry of the most recent custodial
17 order.
18

19 **Decisional Law Factors**

20 In addition to the statutory factors, the Nevada Supreme Court noted
21 practical factors the district court may weigh in evaluating the consequence of
22 placement in *Rico v. Rodriguez*, 121 Nev. Ad. Op. No. 71, 120 P.3d 812 (2005).
23

24 Specifically:

- 25 • Living conditions and environment
- 26 • The parties' interaction with the children
- 27

- 1 • Educational neglect
- 2
- 3 • Medical neglect
- 4
- 5 • Employment and stability

6 In addition to the statutory considerations, the court makes the following
7 findings concerning the consequences of physical placement of these children.

8 The court finds that both parties have a suitable place to exercise custodial
9 time. The parties have stable employment and sufficient means to provide for the
10 children.
11

12 The court concludes that Ethan’s best interest is served by returning to the
13 week to week custodial schedule. It is in Mia’s best interest to resume meaningful
14 time with her mother, but because she is two years from the age of majority, and
15 because she has significantly more conflict with her mother, it is best that she live
16 primarily with her father. Both parties should ensure that the minor children have
17 frequent associations and a meaningful relationship with both parents.
18

19

20 **B. ATTORNEYS FEES/ COSTS**

21 Both Christina Calderon and Mitchell Stipp seek an award of attorneys’
22 fees and costs in this judgment. Both parties supported their fee requests with
23 sworn testimony.
24

25 The Nevada Supreme Court held that factors found in *Brunzell v. Golden*
26 *Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) apply to family
27

1 law cases. Two requirements must be met before making an attorney's fees
2 award:
3

- 4 (1) There must be a legal basis for the award. Fees must be allowed
5 by an express or implied agreement or when authorized by statute
6 or rule; and
- 7 (2) Fees must be appropriate and reasonable. Courts must consider:
 - 8 (a) The qualities of the advocate;
 - 9 (b) The character and difficulty of the work performed;
 - 10 (c) The work actually performed; and
 - 11 (d) The result obtained.

12 *Miller v. Wilfong*, 121 Nev. Adv. Op. 61, 119 P.3d 727 (9/22/2005).

13 There is legal basis in the stipulated judgment, statutory authority, and
14 decisional law for an award of attorneys' fees and costs. NRS 125.150(3)
15 provides, in part, as follows:

16 Whether or not application for suit money has been made under the
17 provisions of NRS 125.040, the court may award a reasonable attorney's
18 fee to either party to an action for divorce if those fees are in issue under
19 the pleadings.

20 The district court must also consider the disparity in income of the parties in
21 awarding fees. *Wright v. Osburn*, 114 Nev. 1367, 1370, 970 P.2d. 1071, 1073
22 (1998). The Nevada Supreme Court found that, "The wife must be afforded her
23 day in court without destroying her financial position. This would imply that she
24 should be able to meet her adversary in the courtroom on an equal basis."

25 *Sargeant v. Sargeant*, 88 Nev. at 227, 495 P.2d 618 (1972).
26
27
28

1 This court finds that both parties have incurred substantial fees and costs in
2 this case. The court concludes that neither party should be responsible for paying
3 fees to the other party. Mitchell Stipp filed a motion for good cause, and Christina
4 Calderon filed a motion for good cause.
5

6 **C. NOTICES**
7

8 a. Pursuant to NRS 125.510 (6), the parties are hereby placed on
9 notice of the following:
10

11 “PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION,
12 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS
13 ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN
14 NRS 193.130. NRS 200.359 provides that every person having a limited right of
15 custody to a child or any parent having no right of custody to the child who
16 willfully detains, conceals or removes the child from a parent, guardian or other
17 person having lawful custody or a right of visitation of the child in violation of an
18 order of this court, or removes the child from the jurisdiction of the court without
19 the consent of either the court or all persons who have the right to custody or
20 visitation is subject to being punished for a category D felony as provided in NRS
21 193.130.”

22 b. Pursuant to NRS 125.510 (7) and (8), the parties are hereby
23 placed on notice that the terms of the Hague Convention of October 25, 1980,
24 adopted by the 14th Session of the Hague Conference on Private International
25 Law, apply if a parent abducts or wrongfully retains a child in a foreign country.

26 c. NOTICE IS HEREBY GIVEN that the parties are subject to
27 the provisions of NRS 31A and 125.450 regarding the collection of delinquent
28

1 child support payments, and that either party may request a review of child
2 support in accordance with NRS 125B.145.
3

4 **WHEREFORE, IT IS HEREBY ORDERED** that Christina Calderon
5 and Mitchell Stipp shall continue to share joint legal custody of Mia Stipp and
6 Ethan Stipp.
7

8 **IT IS FURTHER ORDERED** that Christina Calderon and Mitchell Stipp
9 shall continue to share joint physical custody of Ethan Stipp, with the parties
10 having an alternating week on/week off timeshare, with a custodial exchange
11 each Friday at 5:00 p.m. Christina Calderon’s custodial week pursuant to this
12 order shall begin on September 18, 2020.
13

14 **IT IS FURTHER ORDERED** that Mitchell Stipp shall have primary
15 physical custody of Mia Stipp, subject to Christina Calderon’s visitation.
16 Christina Calderon shall have Mia Stipp every other weekend defined as Friday at
17 5:00 p.m. through Monday at 8:00 a.m. Christina Calderon’s weekend shall
18 coincide with her custodial week with Ethan Stipp. Christina Calderon’s custodial
19 weekend pursuant to this order shall begin on September 18, 2020.
20
21

22 **IT IS FURTHER ORDERED** that the parties’ holiday and vacation
23 schedule in the Stipulation and Order Resolving Physical Custody, Timeshare,
24 Child Support, and Parenting Matters that was filed on July 9, 2014, shall take
25
26
27
28

1 precedence over, but not break the continuity of the parties' custody and visitation
2 schedule.
3

4 **IT IS FURTHER ORDERED** that because neither party filed Financial
5 Disclosure Forms or advanced requests for modification of their support
6 agreements and current support orders, they shall continue until the parties submit
7 an agreement to modify the current child support order, or until either party files a
8 proper motion seeking a child support review, supported by Financial Disclosure
9 Forms.
10
11

12 **IT IS FURTHER ORDERED** that the parties shall bear their own
13 attorneys' fees and costs in this case.
14

15 **IT IS FURTHER ORDERED** that the case shall be closed upon the entry
16 of this custody order.
17

DATED this _____ day of _____, 2020.

Dated this 17th day of September, 2020



DISTRICT COURT JUDGE

A19 B1E 3935 A2A3
T. Arthur Ritchie
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 In the Matter of the Joint Petition | CASE NO: D-08-389203-Z
for Divorce of: |
7 | DEPT. NO. Department H
8 Mitchell David Stipp and
Christina Calderon Stipp
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

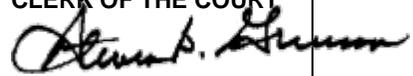
11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
13 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

14 Service Date: 9/17/2020

15 Mitchell Stipp	mstipp@stiplaw.com
16 Courtney Janson	cJanson@radfordsmith.com
17 Garima Varshney	gvarshney@radfordsmith.com
18 Valarie Fujii	vip@fujiiilawlv.com
19 Christina Calderon	ccstipp@gmail.com
20 Radford Smith	rsmith@radfordsmith.com
21 Firm RJS	firm@radfordsmith.com

22
23
24
25
26
27
28

EXHIBIT C



1 RADFORD J. SMITH, ESQ.
Nevada Bar No. 2791
2 **RADFORD J. SMITH, CHARTERED**
2470 St. Rose Parkway, Suite 206
3 Henderson, Nevada 89074
Telephone: 702.990.6448
4 rsmith@radfordsmith.com
Attorneys for Mitchell Stipp, Defendant
5

6
7 **IN THE EIGHTH JUDICIAL DISTRICT COURT**
OF THE STATE OF NEVADA
8 **IN AND FOR THE COUNTY OF CLARK**
9 **FAMILY DIVISION**

10 CHRISTINA CALDERON,

11 Plaintiff,

12 v.

13 MITCHELL STIPP;

14 Defendant.
15

Case No.: D-08-389203-Z

Dept. No.: H

16
17 **DEFENDANT'S CLOSING BRIEF**

18 **Trial Dates: July 23, 2020, March 5, 2020 and August 27, 2020**

19
20 **I. STATEMENT OF FACTS**

21 1. The parties, Christina Calderon ("Christina"), and Mitchell Stipp
22 ("Mitchell"), filed a joint petition for divorce and were granted that relief pursuant to a
23 stipulated decree on or about March 5, 2008 ("Decree"). The Decree incorporated the
24 terms and conditions of a marital settlement agreement dated February 20, 2008
25 ("MSA"). In the MSA, the parties agreed to have joint physical and legal custody over
26 their minor children, Mia Elena Stipp (DOB, 10/19/2004, Age: 15) and Ethan
27 Christopher Stipp (DOB, 3/24/2004, Age: 13).
28

1 2. Mitchell married his wife, Amy Stipp (“Amy”), in 2008, and they have a
2 son, Mitchell Stipp, Jr. (DOB, 1/30/2011, Age: 9). Mitchell, Jr. has special needs.

3 3. Post-divorce litigation began on December 17, 2008, when Christina filed
4 a motion to confirm herself as the primary physical custodian of the children. That
5 litigation, together with ancillary motions concerning the mental health of the children,
6 their schooling (private vs. public), Mitchell’s child support obligations, and the right of
7 first refusal to care for the children (when Christina returned to work), lasted
8 approximately **five (5) years** before Judge Frank Sullivan and Judge William Potter and
9 several appeals before the Nevada Supreme Court.

10 4. The parties finally settled their disputes in a stipulation and order entered
11 by the court on July 2, 2014 (“2014 Parenting Plan”). Pursuant to the Parenting Plan,
12 the parties agreed that they would have joint physical and legal custody over their
13 children with a 50-50 timeshare split (7/7 schedule—one week on/off). There is no
14 dispute that the physical custody relationship as set forth in the 2014 Parenting Plan and
15 exercised by the parties at all relevant times was joint.

16 5. Christina has a history of challenges parenting the children because of her
17 deficient parenting skills. Dr. Lewis Etcoff concluded in his report dated July 27, 2011:
18 that **Christina would greatly benefit from behavior management training** where she
19 would meet with the therapist to discuss examples of behaviors and how she can adjust
20 routines, consequences, and rewards to manage them.

21 6. After agreement to the 2014 Parenting Plan, Christina received counseling
22 from Ann Nichols and parent training from Donna Wilburn. She also engaged Nicholas
23 Ponzio for family therapy.

24 7. There were at least **two (2) instances of domestic violence** involving
25 Mia—one occurred on or about **May of 2019** and the other on or about **August of 2019**.
26 After Mia and Ethan refused to return to Christina’s care on August 23, 2019, Mitchell
27 filed a motion on August 26, 2019 seeking interviews of the children by Family
28 Mediation Center (“FMC”), for mediation and to permit the children to exercise teenage
discretion within the limits of joint physical custody. This motion was later

1 supplemented by a countermotion for primary physical custody and request for teenage
2 discretion filed by Mitchell on October 21, 2019. Despite filings before the court,
3 Mitchell has been clear to Christina that he preferred the parties to resolve matters
4 through family therapy with Mr. Ponzio rather than litigation.

5 8. On October 1, 2019, the court ordered the parties' children to be
6 interviewed by FMC and set a returned date for November 12, 2019. On October 22,
7 2019, the court referred the parties to Donna's House for supervised custodial
8 exchanges. m'Ryah Littleton at FMC interviewed the children on October 23, 2019
9 and prepared a written report which was provided to the court. The case at Donna's
10 House was closed after the children refused on two (2) separate occasions to be
11 transitioned into Christina's physical custody.

12 9. At the hearing on November 12, 2019, the court reviewed the report from
13 Donna's House (which confirmed the termination of services) and the report by Ms.
14 Littleton from FMC. As a result, the court ordered an evidentiary hearing under Rooney
15 v. Rooney, 109 Nev. 540, 853 P.2d 123 (1993).

16 10. The evidentiary hearing occurred on January 23, 2020 (during which Mia
17 and Ethan testified), March 5, 2020 (during which Mitchell testified) and August 27,
18 2020 (during which Christina and her sister, Elena Petsas, testified).¹

19 **II. ANALYSIS OF CHRISTINA'S CASE.**

20 During her testimony at trial on August 27, 2020, Christina requested that the
21 court find that Mitchell has violated the current custodial order by causing the children
22 to refuse to spend time with her. She seeks sanctions against Mitchell, requests make
23 up time for all the time she has missed with them, requests an order that requires that
24 she control the transportation of the children back to Mitchell, and she asks the court to
25 direct the children to continue to engage in family therapy with her and a new therapist
26

27 _____
28 ¹ The testimony of Ms. Petsas has no value and the court should disregard it. She was not present during the incidents of domestic violence. She also claims to have no communication with Mitchell since Christina and Mitchell divorced in 2008.

1 on the schedule she controls and determines. In her pre-hearing pleadings, her
2 deposition, and in her testimony at trial, Christina has laid the blame for her difficulties
3 with the children entirely on Mitchell. She denies all the claims of the children regarding
4 any acts of domestic violence they testified that she committed, and she failed even to
5 address or acknowledge their testimony regarding the significant problems in their
6 relationship with her. At trial, Christina testified that she bore no responsibility for the
7 reluctance of the children to spend time with her, and that “their resistance to visitation
8 was not caused by her actions.” She testified that her relationship with the children was
9 “good” before an incident that occurred between her and Mia on August 13, 2019. In
10 her testimony, she claimed that the August 2019 incident solely involved her request
11 that Mia end her conversation with her boyfriend, and that Mia’s reaction was angry and
12 violent. Christina denies ever striking or using any kind of physical force with Mia on
13 that evening, or during another incident that had occurred between her and Mia in May
14 2019. Christina further testified that Mitchell has interfered with her ability to engage
15 in counseling with the children, and that he has limited her time with them by picking
16 them up and taking them home from any visitation with her. She cites those
17 circumstances as the reasons she claims to have had limited contact with the children.

18 At trial, Christina criticized Mitchell’s attempts to settle the litigation without an
19 evidentiary hearing which would require the children to testify. She did not
20 acknowledge his repeated efforts to use Mr. Ponzio as a resource for therapy. Christina
21 offered no logical reason why in August 2019 Mitchell, after years of co-parenting to
22 help her through the repeated issues she had with the children, would suddenly decide
23 to return to court. Christina’s sole explanation at trial for why she believed Mitchell was
24 “causing the children to not spend time with her” was that he was “tired of coparenting
25 with her.” Christina’s claims are simply contrary to the testimony and documents
26 submitted at trial. The evidence shows the following:

27 1. Christina’s claims regarding her relationship with the children prior to
28 August 2019 are misleading at best. Christina has had difficulties in her relationship
with the children both before and after the entry of the of the 2014 Parenting Plan. The

1 evidence at trial demonstrated that she had difficulty with Mia’s anxiety issues from the
2 first time they were diagnosed when Mia was five (5) years old. The record contains
3 evidence of her complaints about her relationship with Mia and Ethan, including, the
4 emails exchanged between the parties on July 23, 2017 (Pepperdine Trip).

5 2. There were at least two (2) instances of domestic violence involving Mia
6 that the children testified to—one that occurred in May 2019 and the other in August
7 2019.

8 3. The children were interviewed by FMC and gave bleak statements
9 regarding their relationship with their mother. Instead of acknowledging the concerns
10 raised by the child interview report or stipulating to the admissibility of the report,
11 Christina wanted Mia and Ethan to testify. Defendant No. 000265. During her
12 deposition on December 20, 2019, Christina denied the allegations made by the children
13 as described in the child interview report. Id. at 000265-000299.

14 4. At trial, Mia, a straight “A” student that has never been in any trouble at
15 school or elsewhere, testified about her relationship with her mother: “We have always
16 fought. We have never really got along. It’s just, we weren’t really close at all.” She
17 attested to the physical fights with Christina in May and August 2019. She described
18 Christina’s actions in the May 2019 altercation as tackling her, pulling her hair,
19 scratching her, and punching her. Mia further described Christina as “laughing
20 hysterically” when Mia was finally able to push Christina out into the hall from her
21 bedroom and lock her door.

22 5. Mia’s description of the altercation in August 2019 she had with Christina
23 was very different than Christina’s claim that it just involved her telling Mia that she
24 had to end her phone conversation. Christina threatened to call the mother of Mia’s
25 boyfriend and Mia’s teachers to “tell them how bad [she was].” Christina began yelling
26 and screaming so close to Mia’s face that Mia described Christina as spitting on her.
27 Christina began taunting Mia by saying “you are so weak.” Mia was shaking and tried
28 to run away, but Christina and Mia got tangled up in the hallway, in which Mia described

1 as “hair pulling, scratching each other because she was grabbing onto me and I was
2 trying to get her off me.”

3 6. Mia testified that after the August 2019 altercation she believe that the
4 physical fights would continue. Mia testified that Mitchell encouraged her to return to
5 Christina’s house for her timeshare. She testified that Mitchell told her it would be better
6 for her to have relationship with Christina, and that he makes her go to therapy with
7 Christina.

8 7. Mia also testified to Christina locking her in her room for so long that she
9 would “go to the bathroom” in her room. Mia also testified that Christina told her and
10 Ethan that Mitchell, Jr. “would die soon” as punishment.

11 8. Ethan’s testimony was consistent with Mia’s. He witnessed Christina
12 discipline Mia by spitting on her and pulling her hair. He witnessed an altercation
13 between Mia and Christina that he described as “my mom on top of my sister and they
14 were like hitting each other” on Mia’s bed. He confirmed Mia’s statement that Christina
15 told the children that Mitchell, Jr. “is going to die anyway.” He indicated that at the
16 time she had gone to about 3 of 40 of his baseball games (he described Mitchell being
17 at every one), and Christina threatening to call the police to the park where he was with
18 his coach and baseball team.

19 9. While Christina continues to claim that the children are lying in their
20 interview statement and testimony, Christina did concede that she could have “parented”
21 Mia better (Defendant No. 000287, lines 15-22) and protected Ethan from the conflict
22 between her and Mia (Defendant No. 000299, lines 5-11). While little that Christina
23 testified to rang true, there is little doubt about the truth of these admissions.

24 10. Christina’s portrayal of the actions of the children in refusing to spend time
25 with her after August 2019 as a shocking and unpredictable event are belied by the clear
26 and unequivocal testimony of the children. Oddly, it is Mia who shows more maturity
27 in her acceptance of her role in the altercations, and her understanding that some of her
28 actions were wrong. Christina simply dismisses the testimony of the children as lies,
but then claims that she admitted to her actions in counseling to “try anything” to

1 reconcile with the children. In other words, she expects that her false apologies would
2 fool the undeniably bright and articulate children to believe that she was being truthful.
3 Even if one dismisses Ethan and Mia’s testimony that Christina never admitted anything
4 in therapy, it is clearly understandable that they view Christina as “phony.”

5 11. Even after their testimony, neither Mia nor Ethan states a blind hatred of
6 Christina. Instead, they both give a consistent account of their experience with their
7 mother, and the basis for their desire to spend more time in the care of their father, Amy
8 and Mitchell, Jr.

9 12. Christina argued at the hearing that Mitchell interfered with her contact
10 with the children, but any objective view of the examples she gave contradicted her
11 testimony. For example, she indicated that Mitchell prevented her from having time
12 with the children on Christmas (2019), but Mitchell’s emails to her on Christmas as
13 admitted at trial showed multiple efforts by Mitchell to get the children together with
14 their mother.

15 13. Her claims regarding Mitchell’s lack of co-parenting are belied by her
16 testimony regarding the meetings at Starbucks, the emails between the parties both
17 before and after the May and August 2019 incidents, and the continued attempts by
18 Mitchell to avoid the litigation between the parties, and seek a solution through
19 counseling.

20 14. Christina has failed to present evidence to support her core claim that
21 Mitchell has alienated the children. The children’s testimony, and Mitchell’s testimony
22 regarding the events following the various issues with the children demonstrate that
23 Mitchell has tried to aid Christina with her rocky relationship with the children. He
24 could not overcome, however, her increasingly violent and emotionally abusive
25 behavior. His course was to propose therapy and keep the children out of court. Mitchell
26 submits that it is Christina’s insistence of causing the children to testify, and her lack of
27 candor to the children about the events, that have led to a further deterioration of their
28 relationships.

1
2 **III. BEST INTEREST OF THE CHILDREN FOR MITCHELL TO HAVE**
3 **PRIMARY PHYSICAL CUSTODY.**

4 Presumption Against Joint Physical Custody

5 The court may modify or vacate child custody orders at any time. See NRS
6 125C.0045. When considering whether to modify physical custody, the court must
7 determine what type of physical custody arrangement exists between the parties. The
8 court must look at the actual physical custody timeshare the parties are exercising to
9 determine what custody arrangement is in effect. Rivero v. Rivero, 125 Nev. 410, 430,
10 216 P.3d 213, 227 (2009). Different tests apply to modify custody depending on the
11 current custody arrangement. Joint physical custody may be modified or terminated if it
12 is in the best interest of the child. NRS 125C.0045; Truax v. Truax, 110 Nev. 473, 874
13 P.2d 10 (1994). Primary physical custody may be modified only when “(1) there has
14 been a substantial change in circumstances affecting the welfare of the child, and (2) the
15 modification would serve the child's best interest.” Ellis v. Carucci, 123 Nev. 145, 153,
16 161 P.3d 239, 244 (2007). Here, there is no dispute that the parties’ physical custody
17 relationship is joint, and the standard is what is in the best interest of the children.
18

19 The district court has broad discretion to determine child custody matters, and
20 Nevada’s appellate courts will not disturb the district court's custody determinations
21 absent a clear abuse of discretion. See Ellis, 123 Nev. at 149, 161 P.3d at 241 (2007).
22 However, **substantial evidence** must support the district court's determination; that is,
23 the evidence must be such that a **reasonable person** could deem it adequate to support
24 the decision. Rivero, 125 Nev. at 428, 216 P.3d at 226. Under NRS 125C.0035(1), the
25 **sole consideration** of the court is the best interest of the children. In determining the
26 best interest of the children, the district court must consider and make **specific findings**
27 concerning, among other things, the factors enumerated in NRS 125C.0035(4).
28 Furthermore, the order must **tie the children’s best interest**, as informed by "specific,
relevant findings" on the best interest factors, "to the custody determination made." See

1 Davis v. Ewalefo, 352 P.3d 1139, 1143 (2015) (explaining that determining a child's
2 best interest is not achieved simply by processing the case through the factors that the
3 statute identifies as potentially relevant to a child's best interest and announcing a
4 ruling).

5 One of the factors set forth in NRS 125C.0035 asks whether either parent has
6 committed an act of domestic violence. NRS 125C.0035(4)(k). Joint physical custody
7 is **presumed** not to be in the best interest of the child if the court has determined by
8 **clear and convincing evidence** that a parent has committed domestic violence against
9 a child. NRS 125C.0035(5). The term “domestic violence” is defined in NRS 33.018.
10 See NRS 125C.0035(10). Upon finding that such an act of domestic violence occurred,
11 the court is required to set forth findings that support the determination that domestic
12 violence occurred and that the custody order adequately protects the child who is the
13 victim of domestic violence. See NRS 125C.0035(5)(a)-(b).

14 The only witnesses to the domestic violence which has occurred in this case are
15 **Christina, Mia and Ethan**. Despite Christina’s attempts, this case is not about
16 Mitchell, Amy or their son, Mitchell, Jr. The appellate courts of Nevada will not re-
17 evaluate a district court's weight and credibility determinations. Ellis, 123 Nev. at 152,
18 161 P.3d at 244 (refusing to make credibility determinations on appeal); Quintero v.
19 McDonald, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to re-weigh
20 evidence on appeal). These items are within the **sound discretion** of the district court.

21 Instead of acknowledging the concerns raised by the child interview report or
22 stipulating to the admissibility of the report, Christina wanted Mia and Ethan to testify.
23 During her deposition on December 20, 2019, Christina denied the allegations made by
24 the children as described in the child interview report. Id. at 000265-000299. Christina
25 dismissed the characterization by Mia and Ethan that Mia had two (2) “huge” fights in
26 the summer of 2019. She admitted to hitting Mia in the past but denied hitting Mia
27 during the incident on August 13, 2019. She also admitted to pulling Mia’s hair but was
28 evasive when and how this occurred. Christina could not recall the specific
circumstances of the physical contact between her and Mia in May of 2019 and August

1 of 2019 but was certain she did not hit, touch or harm Mia. Id. at 000276-000279.
2 Furthermore, Christina denied locking the children in their room, she denied throwing
3 water on the children, and she denied threatening to harm Mia’s stuffed animals by
4 putting them in a blender. Christina speculated the children were lying (either because
5 Mitchell influenced them, told them what to say, or they made things up to please
6 Mitchell). Christina refused to take any responsibility for the way Mia and Ethan
7 viewed her and their decision to spend less time with her. Interestingly, though,
8 Christina did concede two (2) items: (1) Christina agreed that she could have parented
9 Mia better (Defendant No. 000287, lines 15-22); and (2) Christina agreed that she should
10 have protected Ethan from the conflict between her and Mia (Defendant No. 000299,
11 lines 5-11).

12 At her January 7, 2020 deposition, Christina explained the source of conflict
13 between the parties was Mitchell’s failure to support her parenting. Id. at 000411-
14 000415. However, Christina confirmed during her previous deposition on December
15 20, 2019 that she was not aware of the rules in Mitchell’s home regarding the children’s
16 use of electronics and was unfamiliar with the parenting strategies of Mitchell or Amy.
17 Id. 000329-000330. Christina confirmed the same during her testimony at the hearing
18 on August 27, 2020.

19 As to the role of Mitchell’s wife, Amy, in the proceedings, Christina suggested at
20 her deposition on January 7, 2020 that the matters before the court were being driven by
21 Amy’s desire to have neurotypical children (i.e., ones that do not have special needs).
22 Id. at 000476-000477. In other words, Christina believes Mitchell and Amy had a secret
23 plan to exclude her from the lives of Mia and Ethan because they could not have
24 “normal” children. Christina testified at this deposition that Mitchell’s disclosure of the
25 special needs of his son with Amy in this proceeding was merely a ploy “to get
26 sympathy.” Id. at 000476. What is more reasonable? Mitchell and Amy provide a safe
27 and stable environment for the children which they prefer, or they are so upset because
28 Mitchell, Jr. has special needs that they want to remove Christina from the children’s
lives through pathogenic parenting and parental alienation? The children love Mitchell,

1 Amy and Mitchell, Jr. Mitchell, Jr. is an essential part of the family. There was no
2 evidence before the court to support Christina’s theory. **In fact, there was no evidence**
3 **of pathogenic parenting or parental alienation by Mitchell.**

4 During her testimony before the court on August 27, 2020, Christina blamed
5 Mitchell for the children’s poor view of her and decision to spend less time. Although
6 Christina refuses to accept any real responsibility for the circumstances involving the
7 children, she claims to have addressed the children’s differing perception about their
8 relationship in therapy with Mr. Ponzo. See Video cite, August 27, 2020, 1:41:29 –
9 1:42:10. In other words, she claims to have acknowledged to the children that their
10 feelings and concerns were valid based on their perception of events and circumstances
11 (i.e., “I am sorry you feel that way” vs. “I am sorry.”). Christina is a Chief Deputy
12 District Attorney in the Juvenile Division of the Clark County District Attorney’s Office.
13 She clearly understands the nature of domestic violence and child abuse. It would seem
14 the very nature of her position would make it very difficult to admit to making any
15 mistakes with the children.

16 The testimony of Mia and Ethan on January 23, 2020 was consistent with their
17 statements reported to Ms. Littleton in the child interview report. Mitchell’s testimony
18 on March 5, 2020 was consistent with the children’s testimony about the events reported
19 to him by the children. Mia has testified in detail as to alleged battery by Christina in
20 May and August of 2019. Specifically, Mia testified that Christina **tackled her, pulled**
21 **her hair, scratched her** and **punched her** during the incident in May of 2019. See
22 Video Cite, January 23, 2020, 10:13:49 – 10:15:49. Mia also testified that during the
23 incident in August of 2019 there was **hair pulling, scratching** and **wrestling**. See Video
24 cite, January 23, 2020 10:30:29 – 10:30:51. Ethan has testified to witnessing at least
25 one instance of battery—the event in August of 2019. Ethan testified that he woke up
26 to **yelling**, and “then I saw **my mom on top of my sister**, and they were like **hitting**
27 each other.” See Video, January 23, 2020 1:27:02 – 1:27:21. During Mitchell’s
28 testimony on March 5, 2020, Mitchell confirmed that during his meeting with Christina

1 immediately following the incident in May 2019, “Christina admitted that she was
2 physical with Mia.” See Video cite, March 5, 2020, 2:36:34 – 2:37:07.

3 The Nevada Supreme Court has held that clear and convincing evidence must be
4 "satisfactory" proof that is:

5 so strong and cogent as to satisfy the mind and conscience
6 of a common man, and so to convince him that he would
7 venture to act upon that conviction in matters of the
8 highest concern and importance to his own interest. It need
9 not possess such a degree of force as to be irresistible, but
10 there must be evidence of tangible facts from which a
legitimate inference . . . may be drawn.

11 Gruber v. Baker, 20 Nev. 453, 477, 23 P. 858, 865 (1890), cited in In re Stuhff, 108 Nev.
12 629, 635, 837 P.2d 853, 856 (1992). The evidence before the court reveals satisfactory,
13 strong, or cogent proof of tangible facts establishing a legitimate inference or high
14 probability that Christina committed at least one act of domestic violence against Mia.
15 As the court reminded the parties during Christina’s testimony on August 27, 2020, NRS
16 33.018(a) specifically includes battery. Although Christina was not charged with a
17 crime constituting domestic violence, the events of May and August of 2019 **involved**
18 acts of domestic violence (battery) by Christina against Mia, which are confirmed by the
19 testimony of Mia, Ethan and Christina’s admissions to Mitchell.

20 Given the domestic violence, there is a presumption that joint physical custody is
21 not in the best interest of the children. NRS 125C.0035(5). Christina has not offered
22 any evidence to rebut this presumption other than general denials, evasive responses,
23 inconsistent explanations, or the inability to recall facts. The best interest of the children
24 is served by granting Mitchell primary physical custody of the children (since the
25 presumption was not rebutted by Christina). In the event the court elects not to apply
26 the presumption, under NRS 125C.0035(4), in determining the best interest of the
27 children, the court is required to consider and set forth its specific findings
28 concerning, among other things the following:

1 **(a) The wishes of the child if the child is of sufficient age and capacity**
2 **to form an intelligent preference as to his or her physical custody.**

3
4 Mia and Ethan are of sufficient age and capacity to form an intelligence
5 preference as to their physical custody. Both children would like to reside with
6 Mitchell primarily and have testified as to this preference on January 23, 2020. Mia
7 is almost 16 years old. She attends Faith Lutheran High School. She earns straight
8 A's and has been active participant in the school's music conservatory. Ethan is 13
9 years old, but extremely mature for his age. He attends Faith Lutheran Middle
10 School. He earns A's and B's. He plays baseball for a private club. Christina does
11 not dispute the children have articulated their preference to live primarily with
12 Mitchell. She also has not offered any evidence that the children actually lack the
13 capacity to make this choice.

14 **(b) Any nomination of a guardian for the child by a parent.**

15 N/A.

16
17 **(c) Which parent is more likely to allow the child to have frequent**
18 **associations and a continuing relationship with the noncustodial parent.**

19 Mitchell testified on March 5, 2020 that he has made the children available
20 for timeshare with Christina each weekday (Monday-Friday) after 5:30 p.m. when
21 Christina indicated she was available after work. Mitchell coordinated and
22 scheduled with Christina weekly timeshare at Christina's home and/or events
23 outside of her home (including meals—breakfast, lunch and dinner). Mitchell
24 scheduled and ensured the children's participation in therapy with Mr. Ponzio.
25 During these times, he also arranged for the children to be available before and after
26 therapy for timeshare with Christina. Mitchell believes he has satisfied his burden
27 of encouraging the children to have frequent associations and a continuing
28 relationship with Christina. Both children testified that Mitchell encourage them to

1 go with Christina, attend counseling with Christina, and maintain a relationship with
2 Christina. However, the children are too old for Mitchell to “force” the children to
3 spend time with Christina. The burden should be on Christina to repair her
4 relationship.

5 Christina conceded at her deposition on January 7, 2020 that she “couldn’t
6 physically force” the children to go with her. Defendant No. 000443 (lines 7-9).
7 She admitted that she bears “some responsibility” to enforce the parties’ timeshare
8 arrangement but refused to specify how other than her claim that she follows the
9 court’s orders. Id. (lines 17-21). While Christina offered suggestions like calling
10 the police for assistance, putting Mitchell in jail, assessing Mitchell fines for
11 contempt, or granting her sole custody, she admits that she really has no idea how
12 to enforce a custody order in this case if the children do not want to be in her care.
13 Id. 000487-000489. Even if the children are physically with Christina, she has no
14 ability to ensure they remain with her. Though she falsely testified that all her
15 visitations were terminated by Mitchell picking the children up, upon cross
16 examination she admitted that she had the ability to retain the children, but instead
17 returned them to Mitchell’s care.

18 During Christina’s testimony on August 27, 2020, she pointed to an email
19 dated January 12, 2020 (Plaintiff No. 000280) as evidence that Mitchell was
20 “controlling” therapy. This email does not support her contention. In fact, the email
21 actually confirms Mitchell facilitating timeshare and appointments with Mr. Ponzio
22 for the children. Christina’s testimony misrepresents the email exchanged.

23 **(d) The level of conflict between the parents.**

24 The level of conflict is high. Christina blames Mitchell for the children’s view
25 of her and desire to spend less time with her. Christina denies the allegations made
26 by the children to Mitchell and the court. However, she claims to acknowledge their
27 differing perceptions in therapy although the children dispute the same. Mitchell
28 cannot be physically present to resolve issues while the children are with Christina
during her timeshare. Christina expects Mitchell to assist her (including by

1 resolving factual disputes in her favor when he is not there). If Mitchell does not
2 intervene, Christina blames him. If Mitchell intervenes but does not take the action
3 requested by Christina, Christina blames him. Christina wants Mitchell to punish
4 the children even when Mitchell believes Christina is at fault in the dispute.

5 **(e) The ability of the parents to cooperate to meet the needs of the child.**

6
7 Mitchell has the ability to cooperate with Christina to meet the needs of the
8 children. See Defendant Nos. 000992-000999. Christina also has the ability.
9 However, since the children have elected to spend less time with her, she refuses to
10 financially support the children. During her testimony on August 27, 2020,
11 Christina confirmed that she refuses to pay any portion of the children’s private
12 school, Ethan’s baseball activities, and Mia’s signing lessons. Christina agreed to
13 pay for school and these activities in accordance with 2014 Parenting Plan.
14 Withdrawing financial support because of litigation costs suggests Christina is not
15 willing to cooperate to meet the needs of the children. Christina is hardly poor given
16 the \$2.2M she received as part of the Divorce.

17 **(f) The mental and physical health of the parents.**

18
19 Christina testified at her December 20, 2019 deposition that she has receives
20 therapy from Ms. Nichols and parent coaching from Ms. Wilburn. Id. 000226-
21 000243. The physical health of the parents is not at issue. However, Mitchell has
22 concerns about Christina’s mental state. While there is no formal diagnosis of any
23 mental illness in Christina, her actions toward, and statements to, the children are
24 troubling. Her insults of the children, her taunting them, her attempt to shame Mia
25 by having her attorney bring up the issue of her “viewing of pornography,” her
26 passive-aggressive attempts to harm the children in their most beloved activities by
27 disparaging the children to instructors and coaches and then refusing to contribute
28 to them, and her seeming indifference to the strain caused by her insisting that the
children testify and be grilled by her counsel, all suggest that she does not have a

1 firm grasp on the psychological effects of her actions. Indeed, even during her
2 testimony on August 27th she showed a blithe attitude about the children's
3 involvement in the action when she laughed at the notion that her children hated her
4 attorneys. Instead of understanding the embarrassment and frustration that led to
5 such hatred, she apparently thought it was funny. Mitchell is concerned that
6 Christina is completely oblivious to the impact on the children of her actions. The
7 fact that she testified that her relationship with Ethan was great and that Mr. Ponzo
8 did not recommend any therapy for them is hardly believable in light of Ethan's
9 testimony.

10 **(g) The physical, developmental and emotional needs of the child.**

11 The children are physically, developmentally and emotionally sound. Mia has
12 anxiety. However, Mitchell provides Mia the necessary support to manage.
13 Mitchell does not have any issues parenting the children. They are not physically
14 or verbally abusive in his care. Christina confirmed the same during her deposition
15 on January 7, 2020. *Id.* at 000485-486. Mitchell provides a stable, safe, and loving
16 home. He is now solely providing for their private school and other activities. The
17 children have testified to his means of discipline and reward, and the effectiveness
18 of his methods are attested to by the continued success of the children in his *de facto*
19 custody for over a year.

20 **(h) The nature of the relationship of the child with each parent.**

21 Mitchell has a great relationship with the children as confirmed by the
22 children's testimony on January 23, 2020. Christina's relationship is poor
23 (especially with Mia). This fact is also confirmed by the children's testimony.
24 Christina testified at her deposition on December 20, 2019 that Mia and Ethan have
25 a good relationship with Mitchell and Amy. *Id.* 000299 and 000319.

26 **(i) The ability of the child to maintain a relationship with any sibling.**

27 Mia will be 16 years old on October 19, 2020. Ethan is 13 years old. The
28

1 children have been raised together. Both have a brother, Mitchell, Jr., who is the
2 son of Mitchell and his wife, Amy. Mitchell, Jr. is 9 years old. He has special
3 needs. Both Mia and Ethan have a strong bond with Mitchell, Jr., and are
4 instrumental to his overall development. Mia and Ethan are also very close and
5 would prefer to remain together. Christina confirmed during her deposition on
6 January 7, 2020 that the relationship between Mitchell, Jr. and Mia and Ethan is
7 very good and that the children benefit from it. Id. 000478.

8 **(j) Any history of parental abuse or neglect of the child or a sibling of**
9 **the child.**

10 There is an issue of parental abuse arising from allegations of domestic violence.
11 The unequivocal testimony of the children, and Christina's wavering and
12 inconsistent testimony bear evidence that she has committed acts of domestic
13 violence against Mia that were witnessed by Ethan.

14
15 **(k) Whether either parent or any other person seeking physical custody**
16 **has engaged in an act of domestic violence against the child, a parent of the**
17 **child or any other person residing with the child.**

18 Mitchell believes Christina has committed domestic violence against Mia. In
19 the event that the court elects not to apply the presumption set forth in NRS
20 125C.0035(5), there is substantial evidence that a battery occurred in May of 2019
21 and August of 2019.

22
23 **(l) Whether either parent or any other person seeking physical custody**
24 **has committed any act of abduction against the child or any other child.**

25
26 Neither parent has committed an act of abduction.

27
28 None of the above factors support a finding that physical custody should
remain the same (or Christina should have primary or sole custody even on a

1 temporary basis as she has requested). Until Christina repairs her relationship with
2 the children, there will likely be more physical confrontations, which Mitchell
3 would like to avoid. Mitchell cannot parent the children while the children are in
4 Christina's physical care (especially if such help is met with allegations of
5 pathogenetic parenting, parental alienation or undermining of Christina's
6 parenting). The children are doing well. Mitchell is committed to ensuring that the
7 children have a relationship with Christina. However, it is Christina's burden to
8 bear on the type of relationship she wants with them.

9 **IV. CONCLUSION**

10 Mitchell respectfully requests the court for primary physical custody of the
11 children and to allow them to exercise teenage discretion. As primary physical
12 custodian, Mitchell would be entitled to child support under Nevada law. Mitchell
13 is also entitled to an award of attorney's fees and costs as the prevailing party,
14 subject to the submission to the court of a memorandum of fees and costs.

15
16
17 Dated: September 4, 2020

18 */s/ Radford Smith*

19
20 _____
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