

IN THE SUPREME COURT OF THE STATE OF NEVADA

DIAMOND HALL,

Appellant,

v.

JUSTIN MARTIN,

Respondent.

Electronically Filed
May 12 2022 04:43 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court No.: 83979

CHILD CUSTODY FAST TRACK REPLY

1. Name of Party filing this fast reply:

Diamond Hall

2. Name, law firm, address, and telephone number of attorney submitting this fast track reply:

Amy A. Porray, Esq.
Nevada Bar Number 9596
McFarling Law Group
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3. Statement of facts. Briefly set forth the facts material to the issues on appeal:

Respondent, Justin Martin's Statement of Facts is procedurally and legally improper. This Court should strike it for noncompliance with this Court's briefing requirements.

Although pro se parties are exempt from the requirement that every assertion in a brief regarding matters in the record be supported by a reference to the appendix, “[p]ro se parties are encouraged to support assertions in briefs regarding matters in the record by providing citations to the appropriate pages and volume of the trial court record.” NRAP 28(e)(3). Separate and aside from NRAP 28(e)(3), reference to matters outside of the record on appeal is improper. *Hines v. Plante*, 99 Nev. 259 n.1, 661 P.2d 880 (1980). A party may not inflame this Court against the other party or otherwise attempt to support its position using facts that are outside of the record. *Nevada Employment Sec. Dep’t v. Weber*, 100 Nev. 121, 123, 676 P.2d 1318, 1329 (1984). This Court’s review is limited to the record below and determination of whether the district court has erred. *Id.* at 124, 676 P.2d at 1320.

Respondent, Justin Martin’s statement of facts is egregiously nonconformant with the Nevada Rules of Appellate Procedure, case law, and common decency. In his factual statement Justin extensively refers to matters outside of the record. He uses inflammatory language and disingenuously represents allegations as being true facts—such as Diamond having committed domestic violence and having committed certain types of acts. He makes argumentative, conclusory statements that have no place in an appellate brief. Shockingly, he accuses Diamond of being a liar and a prostitute—when it was shown in the district court that his counsel cavalierly and recklessly submitted the incorrect name search and criminal prostitution history for

the wrong person. 4AA946-48. Justin, however, knowingly, and falsely has reaccused Diamond of being a prostitute.

What is troubling about Justin's factual statement is that he knows how to cite to the appendix. He has citations to the appendix in portions of his statement of facts. Although the statements he makes and supports with a citation are still misleading and argumentative, they are at least verifiable. The fact that Justin knows to cite to the record yet chooses not to do so and instead argues far outside the bounds of permissibility makes his conduct all the more egregious.

This Court should strike his statement of facts because it contains statements outside of the record, irrelevant statements, argumentative statements, and statements that are in controversy with no citation to the record.

For her reply, Diamond reincorporates her statement of facts from her fast-track statement as if fully set forth herein.

Issues on appeal. State concisely the principal issue(s) in this appeal:

- A. Did the district court violate Diamond's constitutional rights by not continuing her trial until after resolution of her criminal cases?
- B. Did the district court err by not finding that Justin violated discovery rules and ordering him to produce all portions of the audio/video recordings of the alleged domestic violence allegations to Diamond?

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4. Legal argument, including authorities:

Applicable to all of Justin's responses is that this Court will only consider a party's arguments when supported by relevant authority. *Carson v. Sheriff*, 87 Nev. 357, 487 P.2d 334 (1971); *Nevada Employment Sec. Dep't v. Weber*, 100 Nev. 121, 123, 676 P.2d 1318, 1319 (1984); *see also Stanfill v. State*, 99 Nev. 499, 665 P.2d 1146 (1983) (opinion on reh'g). Justin has cited no legal authority to support his argument(s). Accordingly, this Court need not consider his contentions. However, Diamond will address each in turn below.

A. Justin did not refute that the district violated Diamond's constitutional rights by not continuing her trial until after resolution of her criminal case.

Justin's only argument that the district court did not violate Diamond's constitutional rights by not continuing her trial until after her criminal case is that Diamond did not object in the district court and, therefore, has not preserved this for appeal. Justin's argument fails.

At the point that Justin references Diamond's counsel stating that the trial should go forward, the district court had already told the parties that there would be no continuances. AA936-50. Thus, Diamond's counsel was not in a position to object to a decision that had already been made following the parties' fruitless litigation to the contrary. Regardless, objection or not, this court may review a plain

error and/or a constitutional error on appeal, even *sua sponte*. *Morales v. State*, 122 Nev. 966, 973, 143 P.3d 463, 467 (2006). Plain error is error that was plain or clear and affected the party's substantial rights by exacting actual prejudice or a miscarriage of justice. *Green v. State*, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003).

The error here is constitutional and plain. Diamond was forced to choose between two constitutional rights, with one or both being severely and adversely affected. Accordingly, this issue is subject to review on appeal whether it was preserved or not. Justin has otherwise not substantively challenged the issue of the deprivation of Diamond's due process rights. In fact, he proves Diamond's argument by stating that the issue is settled because she committed domestic violence, testified to having committed domestic violence, and that the district court order was therefore properly entered. He also argues that this is somehow fair because Diamond's visitation schedule is better than a man would have received. This all supports the extreme deprivation of Diamond's constitutional rights and the necessity for an alternative procedure.

Justin has failed to respond to Diamond's argument. This Court should grant Diamond's request, reverse the district court's decision, and remand for a new trial after adjudication of the criminal case.

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B. Justin has not shown that the district court did not err by finding that he did not violate discovery rules.

Justin's argument that the district court did not err regarding the discovery rules is that the onus was on Diamond to make sure that Justin participated in discovery. His argument is that she should have filed a motion to compel to get the recordings that he did not turn over (and that she did not know existed). This is a fundamental misunderstanding of the law and of the legal practice. Also, he states what his discovery responses and objections were—which are not part of the record—but also does not understand that regardless of the objection, *he must still respond to the discovery*.

He does not address the issue raised in Diamond's fast track statement that Justin had been ordered throughout the case to provide the video to the Court but did not do so, and that Diamond had specifically requested discovery and he told her it did not exist. Then, during the trial, he testified that he had over four hours of video and 30 hours of audio, which was inconsistent from any other previous representation Justin had made. Diamond could never have addressed that issue before trial or with the discovery commissioner (as he argues she should have done) because she did not know that discovery existed until then.

On appeal, Justin talks about the purported contents of the audio and video that he never gave to Diamond in an attempt to show this Court that she was not

entitled to the material and that it did not hurt her case. This is absolutely improper. He continues to prejudice her and serve as the gatekeeper over all discovery. Justin's argument is untenable and has no basis in fact or law.

Accordingly, the district court erred by not ordering that the complete video should have been introduced, rather than Justin's snippets. Further, the district court should have ordered that Justin turn the audio and video over and continued the trial until he did the same. Accordingly, the district court's decision should be remanded for a new trial with Diamond having the complete evidence to review.

VERIFICATION

1. I hereby certify that this fast track reply complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this fast track statement has been prepared in a proportionally spaced typeface using Microsoft Word–Office 365 Business in font type Times New Roman size 14.

2. I further certify that this fast track reply complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more and contains 1719 words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains ____ words
or ____ lines of text; or

☐ Does not exceed ____ pages.

3. Finally, I recognize that under NRAP 3E I am responsible for timely filing a fast track response and that the Supreme Court of Nevada may impose sanctions for failing to timely file a fast track reply, or failing to raise material issues or arguments in the fast track reply. I therefore certify that the information provided in this fast track reply is true and complete to the best of my knowledge, information, and belief.

DATED this 12th day of May, 2022.

MCFARLING LAW GROUP

/s/ Amy A. Porray

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*Attorney for Respondent,
Diamond Hall*

CERTIFICATE OF SERVICE

I, an employee of McFarling Law Group, hereby certify that on the 12th day of May, 2022, I served a true and correct copy of this Child Custody Fast Track Response as follows:

☒ by United States mail in Las Vegas, Nevada, with First-Class postage prepaid and addressed as follows:

Justin Martin
3144 Manti Peak Avenue
North Las Vegas, NV 89081

/s/ Crystal Beville
Crystal Beville