

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

2  
3                   **NECHOLE GARCIA,**

4                               Appellant,

5                               **vs.**

6                   **EVGENY SHAPIRO**

7                               Respondent.

Electronically Filed  
Jan 28 2022 01:11 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

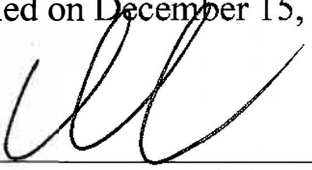
Supreme Court Case No: 83992

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9                   **APPELLANT'S MOTION FOR STAY PENDING APPEAL**

10                               ***EMERGENCY MOTION UNDER NRAP 27(e)***

11                               ***ACTION REQUESTED BY Friday February 11<sup>th</sup>, 2022***

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13                   Nechole Garcia, Appellant, files this *Emergency Motion* requesting that the  
14 District Court's order of December 15, 2021, which mandates a custodial schedule,  
15 holiday schedule and child support, be STAYED, pending the outcome of the  
16 appeal currently pending. Appellant filed an Appeal contesting the visitation,  
17 holiday and child support orders as filed on December 15, 2021.

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20                                 
21                               Molly S. Rosenblum, Esq.  
22                               Sheila Tajbakhsh, Esq.  
23                               Rosenblum Allen Law Firm  
24                               376 East Warm Springs Rd, Ste. 140  
25                               Las Vegas Nevada 89119  
26                               Attorneys for Appellant

I.

**REASON FOR REQUEST FOR EXPEDIENT CONSIDERATION**

Pursuant to NRAP 8(2)(A)(ii), Nechole sought a stay in the District Court and the same was denied on January 12<sup>th</sup>, 2022. As such, Nechole seeks an emergency stay in the instant matter and pursuant to the point and authorities outlined below.

Further, NRAP 27(e), Nechole seeks an expedited decision on this matter to be determined on or before Friday February 11<sup>th</sup>, 2022. Namely, the parties share a special needs child. As further argued below, evidence and testimony at the time of trial supported that the minor child does not manage change well and is receiving regular on-going therapy to address her behaviors when her routine and structure are disrupted. Nechole maintains that the constant rotating schedule imposed by the District Court is causing the minor child distress including but not limited to more severe “meltdowns,” regression in potty training and additional behavior regressions.

II.

**POINTS AND AUTHORITIES**

**A. RELEVANT FACTUAL BACKGROUND**

The parties hereto are Appellant Nechole Garcia (hereinafter “Nechole”) and Respondent Evgeny Shapiro (hereinafter “Eugene”). There is one minor child born the issue of the parties’ relationship to wit: Ava Garcia-Shapiro, born September 26, 2018. Ava is a child with special needs as she was diagnosed with Autism Spectrum Disorder, Level 1 with speech delay.

Prior to the District Court’s final decision, the parties were utilizing a Week 1/Week 2 rotating schedule for visitation. Specifically, Respondent had his

1 visitation with Ava Sunday through Tuesday in week 1. In week 2, Respondent had  
2 his visitation with Ava beginning Monday and concluding Wednesday.

3 This matter was tried before District Court Judge Harter on November 3,  
4 2021 and November 5, 2021. At the time of trial, Ava's treating providers testified  
5 regarding Ava's needs and therapeutic treatment. As an example, Heather Tauchen,  
6 Clinical Director for Firefly Behavioral, stated that Ava had several play routines  
7 and was very rigid, opining that if she "tr[ie]d to change the way she played or ask  
8 her questions she would cry or say no or turn away." (11/3 Video at 3:18:32.)  
9 Further, Ms. Tauchen described Ava's speech as "scripting" thereby indicating that  
10 Ava was not functionally communicating. (11/3 Video at 3:21:30.) Ms. Tauchen  
11 opined that Ava needs continued assistance which includes becoming "more  
12 flexible and tolerating changes in her environment," assistance with her speech and  
13 asking for help, increasing her communication, play-skills, social and broadening  
14 her vocabulary. (11/3 Video at 3:13:21.)

15 In addition to her treatment providers, Nechole testified at the time of trial,  
16 Nechole testified that Ava is incredibly routine oriented. (11/3 Video at 3:52:03;  
17 11/5 Video at 9:22:00) She gave specific examples of how Ava gets upset and reacts  
18 if something is outside of her routine. (11/3 Video at 3:54:03.) Nechole advised that  
19 Ava is currently receiving therapy to assist with her rigidity. (11/3 Video at  
20 3:13:21.)

21 On December 15, 2021, the District Court issued its order that modified the  
22 parties' visitation schedule to a 2/2/3 schedule as follows:

23 **Weeks 1 & 3 and any 5th weeks:**

24 Monday-Tuesday: Plaintiff [Dad] picks up Ava at 7 am on Monday.

25 Wednesday-Thursday: Defendant [Mom] picks up Ava at 7 am on  
26 Wednesday.

26 Friday-Saturday-Sunday: Plaintiff [Dad] picks up Ava at 7 am on Friday.

27 **Weeks 2 and 4:**

28 Monday-Tuesday: Defendant [Mom] picks up Ava at 7 am on Monday.

1 Wednesday-Thursday: Plaintiff [Dad] picks up Ava at 7 am on Wednesday.  
2 Friday-Saturday-Sunday: Defendant [Mom] picks up Ava at 7 am on Friday.

3 Nechole maintains that based on the surrounding circumstances and facts of  
4 the case, the new schedule has caused Ava significant regression including more  
5 severe “meltdowns” as well as regression in potty training and other behaviors. As  
6 such, Nechole seeks an emergency stay of the Court’s visitation and holiday  
7 schedule and asks that the parties revert to the week 1/week 2 schedule they were  
8 following until the Court’s decision on December 15, 2021. Furthermore, Nechole  
9 advises that she did seek a stay in the District Court and the same was denied.

10 **B. THE CHILD WILL CONTINUE TO SUFFER IRREPERABLE**  
11 **HARM IF A STAY IS NOT GRANTED**

12 The Nevada Rules of Appellate Procedure articulate some factors that the  
13 court should consider when assessing whether to stay a civil matter involving child  
14 custody. In deciding whether to issue a stay in matters involving child custody, the  
15 Court should consider the following factors pursuant to NRAP 8(a):  
16

17 (1) Whether the child(ren) will suffer hardship or harm if the stay is  
18 either granted or denied;

19 (2) Whether the non-moving party will suffer hardship or harm if the  
20 stay is granted;

21 (3) Whether movant is likely to prevail on the merits in the appeal; and  
22

23 (4) Whether a determination of other existing equitable considerations,  
24 if any, is warranted.

25 In the instant case, there is no monetary judgment included in the order being  
26 appealed, so there is no need to require a Supersedeas Bond or other form of  
27  
28

1 security pending the stay. While Nechole concedes that child support was ordered,  
2 the same is not a judgment, and therefore a Supersedas Bond is not required.

3 ***1. The Child Will Suffer Irreparable Harm if the Stay is Not Granted***

4 Nechole alleges the minor child will suffer hardship and harm if the stay is  
5 not granted. No prejudice or hardship will befall the non-moving party during the  
6 stay. Indeed, testimony at the time of trial clearly demonstrated that Ava does not  
7 handle changes in her routine. Specifically, Heather Tauchen, Clinical Director for  
8 Firefly Behavioral, stated that Ava had several play routines and was very rigid,  
9 opining that if she “tr[ie]d to change the way she played or ask her questions she  
10 would cry or say no or turn away.” (11/3 Video at 3:18:32.) Further, Ms. Tauchen  
11 described Ava’s speech as “scripting” thereby indicating that Ava was not  
12 functionally communicating. (11/3 Video at 3:21:30.) Ms. Tauchen conceded that  
13 she was happy with the progress Ava is making but maintains that Ava needs  
14 continued assistance. This includes becoming “more flexible and tolerating changes  
15 in her environment,” assistance with her speech and asking for help, increasing her  
16 communication, play-skills, social and broadening her vocabulary. (11/3 Video at  
17 3:13:21.)

18 As such, while everyone involved in this case is hopeful that Ava will  
19 become more flexible in her routine and less rigid, there is no evidence of the same.  
20 The District Court’s “wait and see” approach could be extremely detrimental to  
21 Ava. While there is an extremely altruistic view of this child, the real-world  
22 consequences could prove catastrophic. As such, there is no doubt that Ava will  
23 suffer harm if the court’s custodial schedule is not stayed pending the appeal.

24 ***2. The Non-Moving Party Will Not Suffer Any Hardship***  
25 ***As a Result of This Stay***

26 Notably, Eugene will not suffer any hardship if the stay is granted. Upon  
27 grant of this emergency stay, Eugene will simply continue to enjoy the same rights  
28 and privileges as he enjoyed previously. Thus, Eugene will not suffer *any* hardship

1 or harm if the stay is granted. Because the schedule ordered by the District Court  
2 poses a threat to Ava's well-being, Eugene's best interests are also served by a stay.  
3 Potential harm to Ava far outweighs any benefit to prematurely adjust her current  
4 custodial schedule and for this reason, Eugene may suffer minimal harm or  
5 hardship, if any, should this Court award an emergency stay.

### 6 ***3. Nechole is Likely to Prevail on the Merits of the Appeal***

7 This Court has articulated that "a movant does not always have to show a  
8 probability of success on the merits, [but] the movant must 'present a substantial  
9 case on the merits where a serious legal question is involved and show that the  
10 balance of equities weighs heavy in favor of granting the stay.'" *Hansen v. Dist.*  
11 *Ct.*, 116 Nev. At 659, 6 P.3d at 987. Given the facts and the circumstances, Nechole  
12 is likely to be the prevailing party in this appeal.

13 Here, Nechole has raised a serious legal question as to whether the District  
14 Court can utilize only the best interest factors set forth in NRS 125C to make a  
15 custodial determination for a special needs child, without considering any  
16 additional factors. Likewise, Nechole has raised questions regarding the District  
17 Court's order, and its lack of consideration for the child's significant needs, despite  
18 extensive testimony and other substantial evidence of the same.

### 19 ***4. Other Existing Equitable Determinations***

20 In determining whether to stay enforcement of a child custody order, the  
21 Court is to consider "other existing equitable considerations." Here, time is the most  
22 important consideration. Again, while all remain hopeful that Ava can adjust to a  
23 new schedule at the drop of dime, there is no guarantee. The court's experiment  
24 with Ava's well-being is not taken lightly and a "try it and let's see what happens"  
25 approach cannot, and should not be, the default position of the Court when a special  
26 needs child is involved. Therefore, additional equitable considerations warrant a  
27 stay.  
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1 Finally, if the Supreme Court finds in Nechole's favor, this would cause  
2 additional unnecessary litigation to undo what is currently ordered to take place.

3  
4 **IV.**  
5 **CONCLUSION**

6 WHEREFORE, Nechole respectfully requests this an order staying further  
7 enforcement of the district court's order for visitation, custody and child support  
8 and that the parties continue the district court's previously ordered schedule.

9  
10 Dated this 28 day of January 2022.

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12   
13 **MOLLY ROSENBLUM, ESQ.**

14 Nevada Bar No. 08242

15 **SHEILA TAJBAKHSH, ESQ.**

16 Nevada Bar No. 15343

17 376 E. Warm Springs Rd. Ste: 140

18 Las Vegas, NV 89119

19 (702) 433-2889—Phone

20 Attorney for Appellant

1        **27(e) EMERGENCY MOTION AND CERTIFICATE OF COUNSEL**

2        Pursuant to NRAP 27(e), I certify that I am counsel for Appellant Nechole  
3 Garcia, and further moves and certify that to avoid irreparable harm to the minor  
4 child at issue in this matter, relief is needed in less than 14 days. Movant further  
5 certifies:

6        1. The Clerk of the Nevada Supreme Court was notified of Petitioner's intent  
7 to file this Emergency Petition for Writ of Mandamus or Prohibition under NRAP  
8 27(e) on Thursday January 27<sup>th</sup>, 2022 at approximately 4:30 p.m. PST.

9        2. The contact information for the Respondent's attorneys are:

10        Jennifer Isso, Esq.  
11        2470 Saint Rose Parkway #306F  
12        Henderson, NV 89074  
13        ji@issohugheslaw.com  
14        *Attorney for Plaintiff/Respondent*

15        3. The facts showing the nature and cause of the emergency are set forth in  
16 the memorandum of points and authorities in support of Appellant's Emergency  
17 Motion, which are adopted by reference for the purpose of this Certificate of  
18 Counsel.

19        4. All counsel, as well as the District Court, will be immediately served a  
20 courtesy copy by email upon filing this Emergency Motion, related filings, and  
21 Appendices.

22        5. Respondent's Attorney was notified of the Emergency Motion by email  
23 at the email addresses listed above at approximately 11:00 a.m. on January 28<sup>th</sup>,  
24 2022.

25        6. Pursuant to NRAP 27(e)(4), the grounds for the relief sought in this  
26 Emergency Motion were submitted in the District Court and denied on January  
27 12<sup>th</sup>, 2022.



1           7. Appellant respectfully requests the granting of its Emergency Motion to  
2 Stay in an expedited manner, i.e., before Friday February 11<sup>th</sup>, 2022, so as not to  
3 cause further disruption to the minor child at issue in this case.

4           Dated this 28 day of January 2022.

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8 **MOLLY ROSENBLUM, ESQ.**  
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STATE OF NEVADA     )  
                             ) SS.  
COUNTY OF CLARK   )

1. I am the owner and managing partner of the Rosenblum Allen Law Firm, Counsel for Appellant. I am over the age of eighteen (18) years and have personal knowledge of the fact stated herein, except for those stated upon information and belief, and as to those facts, I believe them to be true.

3. I have participated in the drafting and reviewing of the Motion and know the contents thereof. To the best of my knowledge, the Motion and the facts contained therein are true and correct.

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1 4. I certify and affirm that this Motion is made in good faith and not for  
2 purposes of any delay.

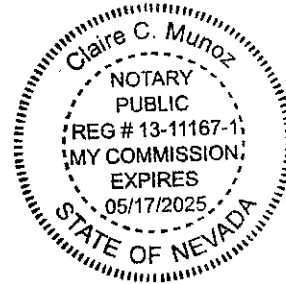
3 FURTHER, AFFIANT SAYETH NAUGHT.  
4

5  
6 DATED this 28 day of January 2022.  
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11 **MOLLY ROSENBLUM, ESQ.**  
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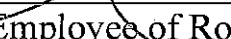
13 **SUBSCRIBED and SWORN** before  
14 me this 28<sup>th</sup> day of January, 2022

15   
16 **NOTARY PUBLIC** in and for  
17 said County and State  
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*Attorney for Plaintiff/Respondent*

  
An Employee of Rosenblum Allen Law Firm