IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN LEE WHITTLE, Appellant, vs. RAVEN MORRIS, Respondent.	Supreme Court No. 82660 District Court Case No. D-19-591074-C

FAST TRACK RESPONSE

1. **Name of party filing this fast-track response**:

   Raven Morris

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

   Patricia A. Marr, Esq.; Patricia A. Marr, LLC; 2470 St. Rose Parkway, Ste. 110; Henderson, Nevada 89074; (702) 353-4225 (telephone)

3. **Name, law firm, address, and telephone number of appellate counsel if different from trial counsel:**

   Respondent, Raven Morris, was represented by Kenneth Robbins, Esq., with Half Price Lawyers, at the time of trial in this matter; 732 South Sixth Street, Las Vegas, Nevada 89101; (702) 400-0000

4. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues raised in this appeal:

This is the only known proceeding before this Honorable Court, the instant proceeding. The proceeding in the District Court is *Brian Lee Whittle v. Morris v. Raven Morris*; Case No. D-19-591074-C

5. Procedural history. Briefly describe the procedural history of the case only if dissatisfied with the history set forth in the fast-track statement:

N/A

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

Disputed facts in Appellant's Fast Track Statement:

i. Appellant alleges that he opened the custody action because he was being denied reasonable visitation, however, the Court did not find Appellant credible in regard to his involvement with the minor child. [ROA, V2, p. 328, ll. 15-17].

ii. Appellant alleges that the Court asserted he was married to another woman at the time the minor child was born; however, the Court made no such

assertion. In fact, the Court, in its summary of testimony stated that Appellant married his present wife, Trina, on April 14, 2014. [ROA, V2, p. 316, ll. 21-22].

iii. Appellant alleges that the Court modified custody to award Respondent primary physical custody of the minor child, in spite of the fact that the parties exercised joint legal custody since October 3, 2019, however, that Order was obtained when Appellant failed to send notice of the court hearing to Respondent's proper address – specifically, to include her apartment number. [ROA, V2, p. 282, ll. 1-7; V2, p. 257, ll. 5-9].

iv. Appellant alleges that the Court "immediately began criticizing Appellant, alleging he "wrongfully" changed the child's name. However, again, Appellant failed to properly serve Respondent with notice of the October 3, 2019 hearing (an undisputed fact) and the Court made such finding of fact because it was undisputed. [ROA, V2, p. 290, ll. 18-26].

v. Appellant alleges that the Court "went out of its way to find fault with Appellant and justified the actions of Respondent. But, the Court did not. In fact, the Court based its award of primary physical custody to Respondent based upon, *inter alia*, the factors of NRS 125C.003, including that Respondent is unable to contact the child while in Appellant's care; that Appellant is not credible in regard to his involvement with the child;

unilaterally changed the child's name; that Appellant delegated the majority of communications regarding the child to his wife, thereby creating unnecessary conflict; that Appellant refused the recommendation of the minor child's school for an IEP; that an act of domestic violence occurred in Appellant's home in front of the minor child; that it did not find Appellant's testimony that he could not locate Respondent and the child, yet Appellant's wife was able to contact Respondent via Facebook – and that the undisputed evidence presented demonstrated that Appellant had contact with Respondent *prior* to filing the action. [ROA, V2, p. 292, ll. 4-9, ll. 14-16; p. 293, ll. 1-2, 14-23; p. 294, ll. 3-10, 27-28; p. 295, ll. 5-10, 17-24].

vi. Appellant alleges that it is undisputed the Respondent allowed little contact with the minor child until he found her again in 2017, however, the Court did not find Appellant's assertion that he was prevented contact with the child credible. [ROA, V2, p. 295, ll. 17-24, p. 296, ll. 1-4].

vii. Appellant alleges that the incorrectly "alleged" that Respondent did not appear because notice was sent to an address that did not include her apartment number and that the Court incorrectly referred to the mediation. However, it is not clear that the Court referred to the mediation instead of the October 3, 2019 hearing for which Respondent did not receive notice. [ROA, V2, p. 282, ll. 1-6].

viii. Appellant alleges that the Decision and Order is "full of factual misrepresentations by the Court, however, the Court's Decision and Order is based upon the evidence admitted at the time of trial, including the testimony of the witnesses. [ROA, V2, pp. 279-312].

ix. Appellant asserts there was "zero" evidence that the minor child's school recommended an IEP, however, there was evidence presented at the time of trial on February 18, 2021, that an IEP was recommended, specifically, the testimony of Respondent. More egregious is Appellant's inclusion of a "Supplemental Exhibits" document entered March 17, 2021, a month ***after*** the trial for this matter. The fugitive March 17, 2021 Supplemental Exhibits document has no date, is hearsay, was not introduced prior to or during the trial and should be stricken from the record. Further, sanctions should be imposed against Appellant, including but not limited to the dismissal of this appeal, and this Honorable Court should take note of his devious attempt to place this fugitive document into the record for appeal. Nonetheless, this act supports the District Court's finding regarding Appellant's wrongful behavior, his lack of credibility and his deceptive actions. [ROA, V2, p. 293, ll. 12-13; p. 292, ll. 15-16].

7. Issues on appeal. State concisely your response to the principal issue(s) in this appeal:

There are not any issues for appeal. The District Court assessed the evidence before it, including the veracity of the witnesses that testified at the time of trial on February 18, 2021. Further, the Court's Decision and Order was based upon numerous findings adverse to Appellant and, *inter alia*, the best interest factors pursuant to NRS 125C.0035(4).

8. Legal argument, including authorities:

i. This Court has consistently provided that the district court's findings of fact will not be disturbed on appeal if they are supported by substantial evidence. *Clark County v. Sun State Properties*, 119 Nev. 329, 334, 72 P.3d 954, 957 (2003).

In this case, the District Court was presented with all of the evidence at the time of trial and it's Findings of Fact and Conclusions of Law and orders in its Decision and Order should not be disturbed on appeal because there is no substantial evidence to the contrary.

ii. It is the function of the fact finder, not the appellate court, to assess the weight of the evidence. *McNair v. State,* 108 Nev. 53, 56, 825 P.2d 571, 573 (1992).

Here, the trial court's findings and Decision and Order should not be disturbed on appeal, given the trial court was in the best position to assess the weight of the evidence presented and the credibility of the witnesses.

iii. Review on appeal is limited to the record. *University and Comm. College System of Nevada v. Nevadans for Sound Gov't*, 120 Nev. 712, 187, 100 P.3d 179 (2004).

Appellant has introduced as part of the record on appeal, a "fugitive" document, specifically, an undated, hearsay document that was filed by Appellant after the trial in this matter [ROA, V2, pp. 351-354]. Accordingly, sanctions should issue, including but not limited to, the dismissal of the instant appeal.

9. Preservation of issues. State concisely your response to appellant's position concerning the preservation of issues on appeal:

Appellant failed to preserve any issues at the time of trial in this matter and his appeal should be dismissed forthwith.

VERIFICATION

1. I hereby certify that this fast-track response 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:

[X] This fast-track response has been prepared in a proportionally spaced typeface

using Microsoft Word; version 2109 in Times New Roman size 14 font.

or

[ ] This fast-track response has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this fast-track response complies with the page- or type-volume limitations of NRAP 3C(h)(2) because it is either:

[X] Proportionately spaced, has a typeface of 14 points or more and contains _____ words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains 1620 words or ___ lines of text; or

[X] Does not exceed 16 pages.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast-track response is true and complete to the best of my knowledge, information, and belief.

Dated this 22nd day of October, 2021.

(Signature of Attorney)	/s/Patricia A. Marr, Esq.
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